

Subject Matter Code: F Endangered Species Act

Comment ID: CTR-001-009a

Comment Author: Law Offices of Alan C. Waltner

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org: Alameda Cnty Clean Wtr Pgm

Document Date: 09/22/97

Subject Matter Code: F Endangered Species Act

References:

Attachments? N

CROSS REFERENCES J-06

Comment: THE PROPOSAL VIOLATES THE NATIONAL ENVIRONMENTAL POLICY ACT AND ENDANGERED SPECIES ACT, AND WOULD USURP THE ROLE OF CONGRESS AND THE STATE AND REGIONAL BOARDS

Major environmental impacts of controls could also be foreseen if the water quality standards of the proposed CTR were to apply as numeric effluent limitations or wasteload allocations. This would result in the requirement to prepare an EIS in connection with the proposed rule. (*13) In effect, substantial end-of-pipe treatment facilities on the same order of magnitude as existing POTWs in the Bay Area could be necessary.

Given the scale and location of the facilities that would be required, significant wetland, endangered species and other environmental impacts could occur. EPA must fully evaluate these impacts of the proposed rule before the rule is promulgated. (*14)

A more expansive application of the WQS also would usurp the basin planning process to the extent that the regional boards have included textual discussions of how ambient water quality criteria are to be implemented, particularly with respect to MS4s. The San Francisco Basin Plan states generally that WQS are to be addressed by MS4s through escalating BMPS. EPA has not taken action to disapprove the San Francisco Basin Plan and cannot implicitly repeal portions of that plan through inconsistent preamble language in the currently proposed rule.

Congress has already addressed this significant public policy question and the agency cannot shed its Congressional leash and arrogate legislative power. This is particularly true given the massive expenditures of public funds that could be implicated under at least the more expansive view of what EPA has proposed. We elect our representatives in Congress to balance these major questions, such as the matter of whether local funds should be siphoned from schools, police, infrastructure, etc., to fund storm water controls at the scale necessary to meet WQS regardless of cost. Congress has determined in Section 402(p) that MS4s need only adopt controls to reduce pollutants in storm water to the maximum extent practicable, and to effectively prohibit non-storm water discharges to the storm water system, rather than being subjected to infeasible or exorbitantly expensive numeric effluent limitations.(*15)

(*13) To the extent that the CTR will force development of end of-pipe treatment systems, promulgation of the CTR will represent a major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act, triggering the requirement to develop an

environmental impact statement to support the rule.

(*14) Commenters have been limited in their ability to present specific information on the question of endangered species, wetland and other environmental impacts given the short comment period on the proposal and EPA's refusal to extend that comment period.

(*15) In Sections 402(p)(5) and (6)f Congress also directed that the approach to meeting water quality standards should MEP-level controls on major dischargers fall short would be to study and expand the scope of the program to include additional dischargers. No mention is made of subjecting major MS4s to more stringent controls. In fact, the regulations are expressly required to target stormwater discharges, other than those discharges described in paragraph (2) [major MS4S], to be regulated to protect water quality - 33 U.S.C. section 1342(p)(6) (Emphasis added).

Response to: CTR-001-009a

With respect to compliance with NEPA, section 511(c) of the Clean Water Act excludes this rulemaking from the requirements of NEPA. The comment also assumes that stormwater discharges subject to numeric effluent limitations will have to be treated by new end-of-pipe facilities. As explained in the response to Storm Water Economics Comments (Category J, Comment CTR-040-004), EPA believes that implementation of criteria as applied to wet-weather discharges will not require the construction of end-of-pipe facilities.

The purpose of the CTR is to fill the current gaps in water quality criteria in inland surface waters and enclosed bays and estuaries. Any existing provisions in a State Basin Plan that have been approved by the State and EPA would not be negated by the preamble discussion in the CTR.

Regarding the application of MEP under section 402(p) of the CWA see response to CTR-040-004.

See also response to CTR-001-009b (Category J-06; Stormwater Economics).

Comment ID: CTR-012-001

Comment Author: Fish and Wildlife Service

Document Type: Federal Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: F Endangered Species Act

References:

Attachments? N

CROSS REFERENCES

Comment: This is in response to the Environmental Protection Agency's (EPA) August 5, 1997, publication of the Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California; Proposed Rule (Proposed Rule) (Federal Register Vol. 62, No. 150, pages 42159-42208). The Fish and Wildlife Service (Service) provides the following comments specific to EPA's statutory obligations pursuant to section 7 of the Endangered Species Act of 1973, as amended (Act).

Section L of the Proposed Rule states that consultation pursuant to section 7 of the Act will occur. Section 7 of the Act directs that Federal agencies prepare a biological assessment for a proposed action that may affect a listed species, however, to date the Service has not received a biological assessment on the Proposed Rule. The Service has specific concerns regarding selenium, mercury, dissolved metals and PCP and their effects on listed species. Preliminary review indicates that adverse impacts to listed species may occur, therefore, we anticipate that the EPA will formally consult with the Service regarding this proposed rule making process, and will wait until formal section 7 consultation has been completed before finalizing the proposed rule.

The Service looks forward to the opportunity to work with you and our staff on this consultation and appreciates the efforts to date to evaluate the effects of the proposed action on listed species. If you have any questions regarding this response please contact Ms. Maria Boroja at (916) 979-2749.

Response to: CTR-012-001

The US Fish and Wildlife Service (FWS) and US National Marine Fisheries Service initiated formal consultation in a letter to EPA dated November 28, 1997, after reviewing the biological evaluation that EPA submitted to them on October 27, 1997. These documents and others pertaining to the formal consultation process are part of the administrative record of the CTR. EPA completed this process [in October 1999].

Comment ID: CTR-031-002a

Comment Author: Fresno Metro. Flood Ctrl Dist.

Document Type: Flood Ctrl. District

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: F Endangered Species Act

References: Letter CTR-031 incorporates by reference letter CTR-027

Attachments? N

CROSS REFERENCES C-17a

C-17b

J

V

Comment: 2. Since the preamble implies that CTR criteria may be applied in NPDES permits for municipal storm water dischargers as numeric effluent limitations, the proposed rule is flawed with regard to: a) setting attainable, scientifically valid criteria in a manner consistent with state and federal regulatory approaches; b) assessing the potential economic impact on the public served by municipal storm water dischargers; c) assessing environmental impacts pursuant to the National Environmental Policy Act and the Endangered Species Act; and d) providing for the coordinated review and evaluation of the proposed CTR in conjunction with the proposed State Implementation Plan.

Response to: CTR-031-002a

With respect to comments about storm water dischargers, see response to comment CTR-013-003 (Category J; Stormwater Economics).

With respect to comments about NEPA and ESA, see response to CTR-031-002e (Category V; Collaborative Approach). With respect to the comment about coordination with the State Implementation Plan, see response to CTR-031-008b (Category V; Collaborative Approach).

Comment ID: CTR-031-007a

Comment Author: Fresno Metro. Flood Ctrl Dist.

Document Type: Flood Ctrl. District

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: F Endangered Species Act

References: Letter CTR-031 incorporates by reference letter CTR-027

Attachments? N

CROSS REFERENCES J-04

Comment: C. If the CTR as proposed in the current draft is applied to municipal storm water dischargers as numeric effluent limitations, new end-of -pipe facilities will result. The impact of these facilities on the environment in general, and endangered species in particular, must therefore be specifically reviewed pursuant to the National Environmental Policy Act and Endangered Species Act.

End-of-pipe facilities would be required for municipal storm water dischargers in their attempt to meet the subject criteria. Storm water facilities must be located in the lowest topographic areas, which contain many of our most valuable and already diminished wetland habitats. This readily foreseeable environmental consequence of the CTR, if directly applied to municipal storm water dischargers, should not be ignored.

Response to: CTR-031-007a

With respect to ESA, EPA has completed consultation as required by Section 7 of the ESA. With respect to compliance with NEPA, section 511(c) of the Clean Water Act excludes this rulemaking from the requirements of NEPA. The comment also assumes that stormwater discharges subject to numeric effluent limitations will have to be treated by new end-of-pipe facilities. As explained in the response to Storm Water Economics Comments (Category J, CTR-040-004), EPA believes that implementation of criteria as applied to wet-weather discharges will not require the construction of end-of-pipe facilities.

Comment ID: CTR-034-006

Comment Author: SCAP

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: F Endangered Species Act

References: Letter CTR-034 incorporates by reference letter CTR-035

Attachments? N

CROSS REFERENCES

Comment: LEGAL ISSUES -- Executive Order 12866, Unfunded Mandates Reform Act, Regulatory Flexibility Act

* SCAP requests that EPA publish in the Federal Register for public review and comment a full discussion of the CTR criteria and implementation provisions that could be affected through the Endangered Species Act Section 7 consultation process with the U.S. Fish and Wildlife service and National Marine Fisheries Service. Additionally, prior to finalizing the CTR, EPA should provide an opportunity for the public to comment on the Biological Evaluation, Biological Opinion, including Reasonable and Prudent Alternatives, and EPA's proposed decisions regarding the Biological Opinion.

Response to: CTR-034-006

The administrative record for the CTR contains documents concerning the ESA consultation. The record contains EPA's biological evaluation and the FWS's and NMFS's biological opinion. The Services' biological opinion is not subject to public comment, rather EPA's proposed rule is subject to comment. Persons wishing to comment on how the rule would affect threatened and endangered species had adequate opportunity to do so during the comment period.

Comment ID: CTR-035-042

Comment Author: Tri-TAC/CASA

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: F Endangered Species Act

References:

Attachments? N

CROSS REFERENCES

Comment: p. 42192 of preamble & pp. 5-42 - 5-52 (U.S. EPA, 1997c) - The Endangered Species Act EPA should provide a full discussion in the Preamble of the criteria and implementation provisions that could be affected through the consultation process with the U.S. Fish and Wildlife Service and National Marine Fisheries Service. In addition, EPA should provide an opportunity for public comment on the Biological Evaluation, Biological Opinion, including any Reasonable and Prudent Alternatives, and EPA's proposed decisions regarding the Biological Opinion, before the CTR is finalized, This will allow in parties to provide information to EPA that may be relevant to Agency decision making about the impacts of the CTR on threatened and endangered species.

Response to: CTR-035-042

See response to CTR-034-006.

Comment ID: CTR-059-017

Comment Author: Los Angeles County Sanit. Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: F Endangered Species Act

References: Letter CTR-059 incorporates by reference letter CTR-035

Attachments? Y

CROSS REFERENCES

Comment: Endangered Species Act

LACSD requests that EPA publish in the Federal Register for public review and comment a full discussion of the CTR criteria and implementation provisions that could be affected through the Endangered Species Act Section 7 consultation process with the U.S. Fish and Wildlife Service and National Marine Fisheries Service. Additionally, prior to finalizing the CTR, EPA should provide an opportunity for the public to comment on the Biological Evaluation, Biological Opinion, including Reasonable and Prudent Alternatives, and EPA's proposed decisions regarding the Biological Opinion.

Response to: CTR-059-017

See response to CTR-034-006.

Comment ID: CTRH-001-009b

Comment Author: Doug Harrison

Document Type: Public Hearing

State of Origin: CA

Represented Org: Fresno Met. Flood Control

Document Date: 09/17/97

Subject Matter Code: F Endangered Species Act

References:

Attachments? N

CROSS REFERENCES J-6

Comment: Lastly, it's been fairly well documented by EPA testimony before the Congress and by other state stakeholders' concerns about the end-of-pipe mandate, because the end-of-pipe facilities that must be constructed in effect create substantial damage to the riparian and other waters of the U.S. that are of primary concern to us.

With that potential, then certainly NEPA and the Endangered Species Act would require an evaluation of the impact associated with a rule causing or leading to those impacts. And again, the current rule does not consider that nor any of the cost or other impacts related to stormwater programs.

So there is a huge consistency or inconsistency problem that we think must be corrected for the rule to be consistent with the statutes and with your executive orders.

Thank you.

Response to: CTRH-001-009b

With respect to ESA, EPA has completed consultation as required by Section 7 of the ESA. With respect to compliance with NEPA, section 511(c) of the Clean Water Act excludes this rulemaking from the requirements of NEPA. The comment also assumes that stormwater discharges subject to numeric effluent limitations will have to be treated by new end-of-pipe facilities. As explained in the response to Storm Water Economics Comments (Category J, CTR-040-004), EPA believes that implementation of criteria as applied to wet-weather discharges will not require the construction of end-of-pipe facilities.

Subject Matter Code: G-01 Reasonable Potential

Comment ID: CTR-032-002a

Comment Author: Las Gallinas Val. Sanitary Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-01 Reasonable Potential

References: Letter CTR-032 incorporates by reference letter CTR-035

Attachments? N

CROSS REFERENCES C-22

G-09

C-24a

C-24

K

G-04

G-05

G-02

Comment: Regulatory Flexibility and Relief

The District supports EPA's use of "sound science" and current data in developing the proposed criteria in the California Toxics Rule (CTR). The District strongly supports language in the Preamble that references and endorses recommendations of the State Task Forces including use in permitting of:

* reasonable potential analyses * dissolved metals criteria * translators * water effects ratios * site specific objectives * innovative TMDL processes such as effluent trading * performance based interim limits * chronic and acute mixing zones, and * compliance schedules in NPDES permits.

Response to: CTR-032-002a

EPA appreciates the commenter's support for the preamble language on State implementation. However, EPA wishes to clarify that for reasonable potential analysis, the CTR preamble did not explicitly recommend any specific method of calculating reasonable potential including those methods chosen by the State Task Force. The State of California as the implementing authority has the discretion to choose any method that meets the requirements of the Clean Water Act. EPA does support the State's consideration of State Task Force recommendations in selecting implementation procedures including reasonable potential methodology.

Comment ID: CTR-037-001b

Comment Author: Hampton Roads Sanitation Dist.

Document Type: Sewer Authority

State of Origin: VA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-01 Reasonable Potential

References:

Attachments? N

CROSS REFERENCES C-24

Comment: 1. The rule proposes that the more stringent of site-specific and national criteria be used in determining reasonable potential to exceed water quality standards and in development of limits where site-specific criteria have not yet been established. This proposal ignores the scientific basis of a site-specific criterion and that such a criterion is specifically more relevant and appropriate than a national criterion if derived correctly. EPA has acknowledged that national criteria can be more stringent than necessary to protect designated uses because they are designed to protect a wide variety of surface waters, and that a site-specific criterion can be sufficiently protective while being less stringent than a national criterion (Water Effect Ratio Guidance, 1994). This rule is arbitrarily dismissing the use of site-specific criteria which may be more technically defensible than national criteria, while being protective.

Response to: CTR-037-001b

The proposed rule does not by its own terms dictate whether a particular site-specific criterion or a national criterion should be used in a reasonable potential analysis. The reasonable potential analysis to determine whether a discharger needs a water quality-based effluent limit is based on the criterion that applies to the waterbody. EPA agrees that when an approved state site-specific criterion applies to a particular pollutant for a specific waterbody and EPA determines that it need not adopt a criterion for that pollutant and site in the final rule, the State site-specific criterion should be the criterion upon which the reasonable potential analysis is based.

If EPA promulgates statewide federal criteria before a decision to approve a State-adopted site-specific criteria, the more stringent of the two criteria would be used for water quality programs. Both federal and State water quality programs must be satisfied, and application of the more stringent of the two criteria would satisfy both. The CTR does not preclude future State adoption of site-specific criteria. However, a state-adopted site-specific criterion would become the sole criterion upon which a reasonable potential analysis is based only after EPA approves the criterion and also stays or withdraws the corresponding CTR criterion to the specific site.

Comment ID: CTR-086-004a

Comment Author: EOA, Inc.

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org: California Dent

Document Date: 09/26/97

Subject Matter Code: G-01 Reasonable Potential

References: Letter CTR-086 incorporates by reference letter CTR-035

Attachments? N

CROSS REFERENCES C-22

G-09

C-24a

C-24

K-03

G-04

G-05

G-02

Comment: Regulatory Flexibility and Relief

CDA supports language in the CTR Preamble that references and endorses recommendations of the State Task Forces including in part the use of.

* reasonable potential analyses * dissolved metals criteria * translators * water effects ratios * site specific objectives * innovative TMDL processes such as effluent trading * performance based interim limits * chronic and acute mixing zones, and * compliance schedules in NPDES permits.

Response to: CTR-086-004a

EPA appreciates the commenter's support for the preamble language on State implementation. However, EPA wishes to clarify that for reasonable potential analysis, the CTR preamble did not explicitly recommend any specific method of calculating reasonable potential including those methods chosen by the State Task Force. The State of California as the implementing authority has the discretion to choose any method that meets the requirements of the Clean Water Act. EPA does support the State's consideration of State Task Force recommendations in selecting implementation procedures including reasonable potential methodology.

Comment ID: CTR-090-010a

Comment Author: C&C of SF, Public Util. Commis.

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-01 Reasonable Potential

References: Letter CTR-090 incorporates by reference letters CTR-035 and CTR-054

Attachments? Y

CROSS REFERENCES K-01

Comment: We recommend that EPA:

2. Include in the rule an implementation proposal which states that before a criteria is put into a permit there must first be: an assessment that the pollutant could reasonably interfere with the designated uses of the water; a comprehensive TMDL is done which includes all sources of pollutants to the water body; and a reasonable potential analysis is completed for point source dischargers. Only then, after all of these analyses are completed by the state or EPA should the criteria be converted to a permit limit with the appropriate implementation factors.

Response to: CTR-090-010a

The implementation procedures suggested by the commenter are beyond the scope of this rule. Implementation of water quality standards through various regulatory and non-regulatory tools is primarily a State responsibility.

Generally, a permit limit that implements a criterion for a pollutant will only be considered when it has already been determined that limiting the level of the pollutant is necessary to protect the designated use.

This determination occurs during the standard-setting process. EPA agrees that when multiple sources (point and nonpoint) impact a waterbody, a comprehensive TMDL is the preferred regulatory tool under the CWA for determining how best to achieve any necessary load reduction to the waterbody so as to attain water quality standards. When a TMDL has been conducted, the wasteload allocation (WLA) in the TMDL for a discharger would be basis for developing water quality-based effluent limits. When the TMDL includes a WLA for a discharger, a separate reasonable potential analysis to determine whether or not a WQBEL is needed would in most cases be redundant (although in rare cases, it may be that the level of the pollutant in the discharger's effluent is so much less than the level allowed by a WLA/WQBEL that even under worst case conditions the effluent would not exceed the WQBEL; in these cases, permitting authority would have the discretion not to include a limit.).

As recognized in the preamble to the proposed rule, the TMDL process "can be significantly labor and data intensive." 62 FR at 42185. Delaying WQBELs until TMDLs are completed would be inconsistent with the Clean Water Act and would unnecessarily delay attainment of water quality goals. The CWA requires imposition of WQBELs whenever technology-based limits are insufficient to attain water quality standards [301(b)(1)(C) and 402], whether or not a TMDL has been completed for that pollutant. Under federal regulations, permitting authorities must analyze whether a discharger would cause or have the reasonable potential to cause or contribute to an exceedance of water quality standards [Section 122.44(d)(1)(i) , and if so, impose a WQBEL that derives from and implements the standard [Section 122.44(d)(1)(vii)]. Permitting authorities need to consider a number of factors related to the characteristics of the effluent and receiving water (including other sources that influence the background levels of pollutants in the receiving water) in making these determinations. [see, e.g., Section 122.44(d)(1)(ii)].

Subject Matter Code: G-02 Compliance Schedules

Comment ID: CTR-002-010b

Comment Author: Comm. for a Better Environment

Document Type: Environmental Group

State of Origin: CA

Represented Org:

Document Date: 09/24/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? Y

CROSS REFERENCES A

Comment: The proposed implementation plan allowing compliance schedules for effluent limits to attain the criteria to be placed in permits may not pass the antidegradation test either. CBE believes EPA recognizes that permit schedules which allow continued impairment of fishing and aquatic life uses are improper (See e.g., section 1311(b)(1)(C), section 1314(l)(1)(D), section 1342(o)(1) and (3) and section 1313(d)(4)(A) of the Clean Water Act). In the alternative case, however, a schedule allowing discharge of these persistent pollutants to waters attaining the criteria will result in the accumulation of pollutants and will degrade water quality. This degradation is unnecessary as the state has accommodated important economic and social development for years while placing compliance schedules in administrative enforcement orders, and is thus impermissible under 40 CFR section 131.12(a)(2). Indeed, existing California dischargers have been made aware of the need to meet similar or more restrictive criteria since at least 1991, and further extension of time for more pollution should be done through schedules in enforcement orders. Any desire to avoid the administrative effort of continuing to prepare these enforcement orders is easily outweighed by the public interests in clean water and public participation afforded.

In sum, EPA'S. weaker criteria shown in Table 2 do not protect designated uses of water based on sound scientific rationale, and even if this were true for some toxics in some areas of the Bay, the weaker criteria are not necessary to allow important economic or social development. Therefore, revision of water quality standards by adopting these criteria would not meet the tests set forth by 40 CFR section 131.11(a)(1) and section 131.12 and the Clean Water Act provisions these regulations implement, Further, incorporating schedules allowing polluters to harm fishing and aquatic life in water quality standards and effluent limits is improper, and there is no legitimate need for schedules allowing degradation of water quality and restricting public participation to be in permits instead of putting them in administrative enforcement orders as is done today. Thus EPA's proposal may, by failing to provide equal protection for people of color who fish for food and unfairly restricting public participation, also conflict with the Executive Order on environmental justice and civil rights law.

Response to: CTR-002-010b

The Clean Water Act authorizes the use of compliance schedules for meeting water quality standards. Section 303(e), governing the continuing planning process for water quality standards, states that the Administrator shall approve continuing planning processes that have, among other things, effluent limitations and schedules of compliance. See CWA section 303(e)(3)(A) and (F). Congress recognized the practical need for compliance schedules to allow dischargers the time necessary to install treatment to comply with effluent limitations. Other portions of the CWA contemplate that some time is practically necessary in order to allow dischargers time to meet new effluent limits, e.g. section 304(l), providing for

three years to meet water quality based limits in waters that are impaired, and section 301(b)(2), relating to technology-based limits. EPA's implementing regulations also contemplate schedules of compliance. See 40 CFR Section 130.5(1) and (6) which provide that each state must describe the process for developing effluent limitations and schedules of compliance and for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance.

The Environmental Appeals Board has held that an NPDES permit could not contain a compliance schedule unless the State explicitly authorizes such a compliance schedule in state law or regulation. See *Star-Kist Caribe, Inc.* (NPDES Appeal No. 88-5, May 26, 1992; Earlier Order, April 16, 1990). This holding clearly recognizes that compliance schedules are authorized under the Clean Water Act as part of the state's water quality standards. Further, EPA notes that because parties may challenge particular effluent limitations in particular permit proceedings, they may comment on specific proposed permits and then challenge such permits if they believe that EPA's granting of additional time in a particular context is arbitrary and capricious.

The question at issue in authorizing a compliance schedule is how long is reasonably necessary to meet the water-quality based effluent limit contained in a permit. As is consistent with the Great Lakes Guidance, EPA is authorizing five years as the outside limit for a compliance schedule, but expects permit authorities to use shorter compliance schedules wherever possible, or not to use compliance schedules where they are not necessary. Thus authorizing a compliance schedule does not mean each discharger will be allowed up to that amount of time; rather the permit authority will need to make a judgment about what is technically feasible for the dischargers to come into compliance. Further, recognizing that permit reissuance depends on where in the permit cycle the dischargers is, the rule provides that, in effect, the discharger may have up to ten years from the effective date of the rule to come into compliance with permit limits.

The regulated community commented that the compliance schedule was too short, while some environmental commenters argued that there should be no compliance schedule at all. Here, EPA balanced the prior existing compliance schedule time applied by the State of California, which for the Inland Surface Waters Plan and Enclosed Bays and Estuaries Plan was up to ten years and concerns from some dischargers that meeting the limits will take at least five years with EPA's view that the criteria be met as expeditiously as possible.

EPA believes that more than three years may be needed in some circumstances for a variety of reasons. EPA is concerned that in some cases, dischargers may need to implement new state-of-the art treatment technologies or pollution prevention programs. Also, evaluation, design and implementation of facility-wide comprehensive pollution prevention strategies involving product substitution, process line changes may require more than three years. Further, as discussed in the preamble to the proposed rule, the technical and administrative process of modifying and implementing revised requirements for numerous industrial users at POTWs, as well as planning budgeting and undertaking new construction to change treatment processes at a municipal treatment works may take more than three years. 62 Fed. Reg. 42187 (Aug. 5, 1997). Thus, EPA finds that a compliance schedule of five years is reasonable for the CTR.

EPA further notes that its permit regulations allow the use of interim limitations in conjunction with a compliance schedule or other mechanism such as a variance. 40 CFR 122.47.

With respect to comments suggesting that EPA's criteria do not protect designated uses see response to CTR-002-003 (Category C-24; Site-Specific Criteria). With respect to the comment that the CTR may degrade water quality in violation of antidegradation policy see CTR-002-010a (Category A;

Antidegradation) and CTR-039-004 (Category C-14;Fish/Water Consumption).

With respect to comments concerning environmental justice see response to CTR-002-005a (Category C-14; Fish/Water Consumption).

Comment ID: CTR-009-002
Comment Author: City of Thousand Oaks
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/22/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? Y
CROSS REFERENCES

Comment: The City concurs with the five year compliance schedule and variance provisions, and the EPA's recommendation that the State include such provisions in its water quality standards regulations as broadly and flexibly as the law allows.

Response to: CTR-009-002

EPA appreciates these comments providing support of EPA's positions on compliance schedules and variances.

Comment ID: CTR-009-006b
Comment Author: City of Thousand Oaks
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/22/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? Y
CROSS REFERENCES C-24

Comment: With respect to the provisions in the proposed rule regarding compliance schedules and site-specific objective development and approval implementation, the City requests verification that these, and all provisions, in the proposed rule apply only to those constituents for which this rule proposes criteria.

Response to: CTR-009-006b

The compliance schedule allowance only applies to pollutants listed in the CTR. This rule does not address site-specific criteria development.

Comment ID: CTR-013-007b

Comment Author: County of Los Angeles

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References: Letter CTR-013 incorporates by reference letter CTR-027

Attachments? N

CROSS REFERENCES I-05

Comment: In addition, we would like to emphasize the following concerns which greatly impact the Los Angeles County Stormwater Program:

7. The proposed rule provides only a five-year compliance schedule to achieve compliance with the proposed water quality criteria. Again, setting aside the issue of whether water quality standards actually apply to municipal stormwater discharges, municipal stormwater programs are long-term, BMP-based programs. Because of this, it will take many years for a municipality to realize any water quality benefits in the receiving waters. The preamble to the proposed rule addresses all wet weather discharges together in one discussion. Municipal stormwater programs should be discussed and treated separately from all other wet weather and point source discharges. These are unique programs and cannot be placed in a "one-size fits all" regulatory program. The proposed rule needs to account for the nature of stormwater discharges by allowing more time for the MS4 long-term, BMP, source control program approach to take place for controlling pollutants in stormwater discharges.

We recommend that the rule be revised to provide a longer compliance schedule and to provide more flexible regulatory relief for MS4 dischargers who have fully complied with the MEP discharge standards but cannot achieve compliance within the established compliance schedule. At a minimum, the CTR should follow the recommendation of the State Task Force on the Inland Surface Water Plan to provide a 15-year compliance schedule.

Response to: CTR-013-007b

EPA is unwilling to extend the compliance period beyond five years because it has not received specific information indicating under what specific circumstances more than five years would be necessary to meet permit limits. Some municipalities supported the five year compliance schedule, while others argued that it was not sufficiently long. With respect to municipal stormwater discharges, permits are expected to require implementation of BMPs as the effluent limitations and that these BMPs are feasible within five years. Compliance schedules relate to what is necessary to meet the requirements of a particular permit limitation and EPA believes that meeting these limits is feasible within five years.

EPA supports the State in adopting a statewide provision independent of or as part of the current effort to readopt statewide water quality control plans, or in adopting individual basin-wide compliance schedule provisions through its nine Regional Water Quality Control Boards (RWQCBs). The State and RWQCBs have broad discretion to adopt a provision, including discretion on reasonable lengths of time for final compliance with WQBELs. EPA recognizes that practical time frames within which to set interim goals may be necessary to achieve meaningful, long-term improvements in water quality in

California.

EPA would prefer that the State authorize a compliance schedule provision but recognizes that it may not be able to complete this action for some time after promulgation of the CTR. Thus, EPA has chosen to promulgate the rule with a sunset provision which states that the authorizing compliance schedule provision will cease or sunset on September 30, 2004, or in approximately five years. However, if the State Board adopts, and EPA approves, a statewide authorizing compliance schedule provision prior to that time, EPA will expeditiously act to stay the authorizing compliance schedule provision in today's rule. Additionally, if a Regional Board adopts, and the State Board adopts and EPA approves, a Regional Board authorizing compliance schedule provision, EPA will act to stay today's provision for the appropriate or corresponding geographic region in California. At that time, the State Board's or Regional Board's authorizing compliance schedule provision will govern the ability of the State regulatory entity to allow a discharger to include a compliance schedule in a discharger's NPDES permit.

At this time, two RWQCBs have adopted an authorizing compliance schedule provision as an amendment to their respective Basin Plans during the Boards' last triennial review process. The Basin Plans have been adopted by the State and have come to EPA for approval. Thus, the Basin Plans' provisions are effective for the respective Basins. If and when EPA approves of either Regional Basin Plan, EPA will expeditiously act to amend the CTR, staying its compliance schedule provision, for the appropriate geographic region.

Comment ID: CTR-015-006

Comment Author: Eastern Municipal Water Dist.

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/23/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES

Comment: Schedules of Compliance (FR p. 42187, Preamble section F.5.)

It is mentioned that one Regional Board has adopted an authorizing compliance schedule provision in its Basin Plan and that, if the Agency includes a authorizing compliance schedule provision in this Rule, that Regional Board's provision will be recognized and effective. How would other Regional Boards get similar provisions into their Basin Plans, and what is the State Board's function, after this Rule is finalized? This discussion is confusing, as California state law already authorizes the use of schedules of compliance (Porter-Cologne Water Quality Act, Article 4, section 13263(c); California Code of Regulations, Title 23, Division 3, Chapter 91 section 2235.2). The discussion implies that, if the Agency does not include an authorizing compliance schedule provision in this Rule, that compliance schedules would not be allowed, which could impact the State Board's existing general authority and associated policies.

Response to: CTR-015-006

The CTR pre-empts any state law unless the state law is more stringent (Clean Water Act, Section 510).

The compliance schedule allowance in the CTR will be applicable wherever the CTR applies. If a Basin Plan includes a criteria (objective) for pollutant to which the CTR either does not apply or is less stringent, that Basin Plan must allow for compliance schedules in order for a compliance schedule to be included in the permit.

EPA would prefer that the State authorize a compliance schedule provision but recognizes that it may not be able to complete this action for some time after promulgation of the CTR. Thus, EPA has chosen to promulgate the rule with a sunset provision which states that the authorizing compliance schedule provision will cease or sunset on September 30, 2004, or in approximately five years. However, if the State Board adopts, and EPA approves, a statewide authorizing compliance schedule provision prior to that time, EPA will expeditiously act to stay the authorizing compliance schedule provision in today's rule. Additionally, if a Regional Board adopts, and the State Board adopts and EPA approves, a Regional Board authorizing compliance schedule provision, EPA will act to stay today's provision for the appropriate or corresponding geographic region in California. At that time, the State Board's or Regional Board's authorizing compliance schedule provision will govern the ability of the State regulatory entity to allow a discharger to include a compliance schedule in a discharger's NPDES permit.

At this time, two RWQCBs have adopted an authorizing compliance schedule provision as an amendment to their respective Basin Plans during the Boards' last triennial review process. The Basin Plans have been adopted by the State and have come to EPA for approval. Thus, the Basin Plans' provisions are effective for the respective Basins. If and when EPA approves of either Regional Basin Plan, EPA will expeditiously act to amend the CTR, staying its compliance schedule provision, for the appropriate geographic region.

Comment ID: CTR-016-003
Comment Author: San Francisco Bay RWQCB
Document Type: State Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? Y
CROSS REFERENCES

Comment: State Compliance Schedule Provisions

We support the inclusion of compliance schedule provisions and would like EPA to clarify the statement that "any appropriately adopted Basin Plan amendment concerning a compliance schedule would also be effective for the Basin." In 1995, our Basin Plan was formally amended to include a compliance schedule provision (p. 4-14, (f)--see attached). The state review and approval process of those amendments has been completed and we have submitted the amendments to EPA for approval.

Our interpretation is that the regional compliance schedule provisions adopted in Basin Plans would take precedence over any compliance schedule provisions promulgated in the final rule by EPA and that EPA will either formally approve our Basin Plan prior to final rulemaking, or amend the proposed rule such that state-adopted compliance schedule provisions automatically take precedence at the time the final step in the approval process has been completed.

Response to: CTR-016-003

See response to CTR-015-006.

Comment ID: CTR-020-021

Comment Author: City of Stockton

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/24/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? Y

CROSS REFERENCES

Comment: V. Schedules of Compliance

The CTR specifies that schedules of compliance are authorized, but only if the Basin Plan specifically allows the inclusion of schedules in permits. While the City generally agrees that schedules of compliance should be available for new requirements, we disagree that the authority for schedules of compliance must be specifically stated in a Basin Plan. The Porter-Cologne Act itself authorizes schedules of compliance and pursuant to the decision in the Star-kist Caribe, Inc., NPDES Appeal No. 88-5 (may 26, 1992), such authorization is sufficient to allow a schedule of compliance. Stockton agrees that a schedule of at least five years should be allowed. For complex pollution situations such as those related to storm waters, a longer period of compliance should be allowed because the available methods for pollution reduction will take much longer to implement and assess. As EPA allows up to twenty years for compliance for combined sewer overflows (a similar wet weather problem), a twenty-year period should be specified for storm waters.

Response to: CTR-020-021

See response to CTR-015-006.

Comment ID: CTR-021-002f

Comment Author: LeBoeuf, Lamb, Green & MacRae

Document Type: Local Government

State of Origin: CA

Represented Org: City of Sunnyvale

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References: Letter CTR-021 incorporates by reference letter CTR-035

Attachments? Y

CROSS REFERENCES G-04

C-24a

C-22

K-01

G-05

Comment: Sunnyvale is very supportive of many fine concepts advanced in the proposed CTR, and we join with CASA/Tri-TAC in complimenting the Agency on its proposed positions with regard to such matters as: (a) the use of interim effluent limitations in NPDES permits during the pendency of TMDL and other special studies; (b) the allowance of water effects ratios in adjusting the criteria for metals without the necessity for additional rulemaking to establish site-specific objectives; (c) the use of the dissolved state for the metals criteria; (d) the use of cooperative, intergovernmental, and stakeholder-involved approaches towards the development of TMDLs; (e) the allowance of dilution for both chronic and acute pollutants; and (f) the allowance of compliance schedules in NPDES permits.

Response to: CTR-021-002f

EPA appreciates these comments providing support for EPA's allowance of compliance schedules in NPDES permits.

Comment ID: CTR-022-003

Comment Author: SWRCB

Document Type: State Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES

Comment: Thank you for the opportunity to comment on the U.S. Environmental Protection Agency's (U.S. EPA) proposed California Toxic Rule (CTR). The State Water Resources Control Board (SWRCB) staff would like to recognize U.S. EPA's tremendous effort in producing the CTR. The SWRCB staff are providing you with the following comments:

Pages 42188 and 42208: State Compliance Schedule Provisions: The preamble indicates, if the CTR is adopted with compliance schedule provisions, any appropriately adopted basin plan provision authorizing compliance schedules would also be effective for the basin. We support this approach; however, it is not reflected in the wording of proposed Section 131.38(e).

In fact, at least two Regional Water Quality Control Boards have included compliance schedule provisions in their basin plans. These provisions allow compliance schedules of up to ten years in permits. In this respect the basin plan provisions are less stringent than the proposed rule. While the proposed rule states that "...where shorter schedules of compliance are prescribed or schedules of compliance are prohibited by law, those provisions shall govern", the rule does not clarify that existing basin plan provisions authorizing longer schedules are also effective.

Response to: CTR-022-003

See responses to CTR-013-007b and CTR-015-006.

Comment ID: CTR-027-008b

Comment Author: California SWQTF

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References: Letter CTR-027 incorporates by reference letters CTR-001, CTR-036 and CTR-040

Attachments? N

CROSS REFERENCES I-05

Comment: 8. The proposed rule provides only a five-year compliance schedule to achieve compliance with the proposed water quality criteria. Again setting aside the issue of whether water quality standards actually apply to municipal stormwater discharges, municipal stormwater programs are long term BMP based programs. The proposed rule fails to recognize this, addressing all wet weather discharges together in one discussion. Municipal stormwater programs should be discussed and treated separately from all other wet weather and point source discharges. These are unique programs and cannot be placed in a "one-size fits all" regulatory program. The proposed rule needs to account for the nature of stormwater discharges by allowing more time for the MS4 long-term, BMP, source control program approach to take place for controlling pollutants in stormwater discharges.

The compliance schedule in the proposed rule discourages a watershed approach to improving water quality. The development and implementation of a watershed plan requires many years and many stakeholder involvements. However, the short compliance schedule in the CTR would actually encourage the discharger to forgo the watershed approach and address its toxicity issues separately and more expeditiously.

Recommendation: The rule should allow the State to establish compliance schedules. Short of this flexibility, the rule should be revised to provide a longer compliance schedule and to provide more flexible regulatory relief for MS4 dischargers who have fully complied with the MEP discharge standards but cannot achieve WQBELs compliance within the established compliance schedule. At a minimum, the CTR should follow the recommendation of the State Task Force on the Inland Surface Water Plan to provide a 15-year compliance schedule. Also provisions should be made for a longer compliance schedule when dischargers use a watershed approach to control toxic pollutants.

Response to: CTR-027-008b

See response to CTR-013-007b.

Further, in response to comments that EPA adopt a 15-year compliance schedule in order to accommodate schedules for developing TMDLS, EPA disagrees. The schedule for developing TMDLS is not relevant to compliance schedules; they are two totally separate issues. Compliance schedules address how long it will take in terms of technical or financial feasibility to meet an effluent limit established in an NPDES permit; they do not affect when the permit is issued. Moreover, while states may be adopting schedules for adopting TMDLS that extend up to 15 years, NPDES permits continue to be issued, even if this means they are issued before the TMDL is established for a particular waterbody. To do otherwise would be to stop the NPDES program until TMDLS are established. With regard to a situation in which a TMDL or watershed management program for the waterbody are scheduled for completion after the original compliance schedule has lapsed and justifiable delays in meeting WQBELs

arise, the discharger may apply for a variance from the water quality standard if the State develops an authorizing variance provision and the discharger meets the conditions set forth under 40 CFR 131.10(g).

The outside limit of ten years from the effective date of the rule means that dischargers whose permit is not renewed until the end of the ten year time frame will not be able to obtain a compliance schedule. EPA believes that this provision is nevertheless fair and reasonable for several reasons. First, based on the State's Implementation Plan [Reg. 9 put in correct title], EPA expects that the State will be able to reissue permits before the expiration of the ten year periods. Even if the State cannot do this, EPA thinks that ten years notice gives dischargers sufficient time to plan for meeting water quality based effluent limits, particularly given that the rest of the country has been subject since at least 1992 to such water quality standards either under state law or the National Toxics Rule ("NTR"). EPA promulgated the NTR for all states that did not have adequate criteria for toxic pollutants for which EPA had issued CWA section 304(a) criteria guidance.) Dischargers may also have sufficient notice because the State issued to many dischargers NPDES permits based on either the State's Inland Surface Waters Plan and Enclosed Bays and Estuaries Plan or narrative criteria similar to criteria in today's rule. Further, EPA also does not want to create an incentive for dischargers to have their permits re-issued later rather than sooner. Given the concern to have a level playing field among California dischargers, and those across the country who have all been subject to water quality criteria at least since 1992, EPA believes it is reasonable to cut off the compliance schedule for every discharger by ten years after the effective date of the rule.

Comment ID: CTR-030-004a

Comment Author: Utility Water Act Group

Document Type: Trade Org./Assoc.

State of Origin: DC

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? Y

CROSS REFERENCES G-04

I

Comment: D. EPA's Endorsement of Five-Year Compliance Schedules and Interim Permit Limits for Modifications is Appropriate

UWAG strongly supports EPA's recognition that modifications necessary to comply with new or more stringent effluent limitations may necessitate the use of five-year compliance schedules. 62 Fed. Reg. at 42,187, col. 3. UWAG believes, however, that in certain circumstances a longer compliance schedule may be appropriate. Steam electric facilities that need retrofits to meet water quality-based effluent limits (WQBELS) often require extensive engineering design and testing prior to the actual retrofit. Additionally, nuclear facilities must ensure that any design changes are compatible with Nuclear Regulatory Commission regulations. Therefore, the availability of five-year compliance schedules is certainly well-justified. Further, EPA should consider whether longer compliance schedules should be available, at least in some limited circumstances.

Additionally, UWAG strongly supports EPA's approval of interim permit limits for use in permit modifications. This flexibility will allow dischargers to stay in compliance while necessary process or

design changes are carried out.

Response to: CTR-030-004a

EPA appreciates these comments providing support for its compliance schedule provisions. With respect to EPA's decision on compliance schedule length see response to CTR-002-010b.

Comment ID: CTR-031-005a

Comment Author: Fresno Metro. Flood Ctrl Dist.

Document Type: Flood Ctrl. District

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References: Letter CTR-031 incorporates by reference letter CTR-027

Attachments? N

CROSS REFERENCES I

Comment: If the proposed rule is carefully and sufficiently modified to affirm a commitment by EPA to effect only its Congressional authorization as established by CWA section 402(p), then EPA's failure to assess municipal storm water dischargers' ability to attain the proposed standards and associated economic and environmental impacts may be set aside at this time. However, if EPA persists in maintaining the CTR as drafted in this regard, the ambiguities presented in the preamble demand serious consideration and analyses as follows.

a. Many of the criteria are not attainable or scientifically valid with regard to municipal stormwater dischargers, nor is the proposed approach consistent with an appropriate delegation of authority to the State.

iii. State Flexibility and Authority

The CTR states, "The criteria established in this section are subject to the State's general rules of applicability in the same way and to the same extent as are other Federally-adopted and State-adopted numeric toxics criteria when applied to the same use classifications..." p. 42206

This language supports State Water Resources Control Board decisions and the San Francisco Basin Plan which have made it clear that municipal storm water dischargers need to address water quality standards only through the implementation, and escalation as necessary, of best management practices. As noted previously, the language of this section must be better supported in the preamble.

Notwithstanding the above statement on page 42206, the CTR actually diminishes state flexibility in implementing the rule and is inconsistent with state compliance schedules. The CTR mandates implementation limits on the state and implies a 5-year limit on compliance.

A five-year compliance schedule for municipal storm water dischargers is entirely inconsistent with the State's, EPA's, and Phase II stakeholder's understanding of the unique challenges of storm water permitting. The draft Phase II regulation submitted to OMB includes a comprehensive reevaluation of storm water programs after two permit terms, and recommends no added best management practices or

changes in the Phase II program until such evaluation and research are completed.

Response to: CTR-031-005a

See response to CTR-013-007b.

Comment ID: CTR-032-002i

Comment Author: Las Gallinas Val. Sanitary Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References: Letter CTR-032 incorporates by reference letter CTR-035

Attachments? N

CROSS REFERENCES G-01

C-22

G-09

C-24a

C-24

K

G-04

G-02

Comment: Regulatory Flexibility and Relief

The District supports EPA's use of "sound science" and current data in developing the proposed criteria in the California Toxics Rule (CTR). The District strongly supports language in the Preamble that references and endorses recommendations of the State Task Forces including use in permitting of:

* reasonable potential analyses * dissolved metals criteria * translators * water effects ratios * site specific objectives * innovative TMDL processes such as effluent trading * performance based interim limits * chronic and acute mixing zones, and * compliance schedules in NPDES permits.

Response to: CTR-032-002i

EPA appreciates these comments providing support for its compliance schedule provisions.

Comment ID: CTR-034-013

Comment Author: SCAP

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References: Letter CTR-034 incorporates by reference letter CTR-035

Attachments? N

CROSS REFERENCES

Comment: * SCAP endorses the inclusion in the draft CTR of a provision authorizing the use of compliance schedules in NPDES permits. We agree with the rationale for its inclusion, since immediate and full compliance by dischargers simply is not always possible or practicable. We strongly urge EPA, however, to consider modifying this provision to authorize the issuance of permits containing compliance schedules of up to 15 years. While schedules that long need not always be granted, we believe that including the authority in the CTR would allow greater flexibility in crafting control strategies as EPA and the State implement watershed-based approaches, and would foster greater opportunities to pursue pollution prevention avenues before moving to extreme measures, such as advanced end-of-pipe treatment.

Response to: CTR-034-013

See response to CTR-027-008b.

Comment ID: CTR-035-037

Comment Author: Tri-TAC/CASA

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES

Comment: pp. 42187-42188 -- Schedules of Compliance We support the inclusion in the CTR of a provision authorizing the use of compliance schedules in permits, as authorized by the Clean Water Act. We agree with EPA's statement in the Preamble explaining the need for compliance schedule authorization, "because of the potential for existing dischargers to have new or more stringent effluent limitations, under the final rule, for which immediate compliance would not be possible or practicable." However, periods of time longer than 5 years may sometimes be necessary and appropriate. Consistent with the 1990 Starkist-Caribe Order, EPA has full authority to promulgate a compliance schedule provision, and there is no limitation in the Clean Water Act on the length of such a provision (U.S. EPA, 1990a). Therefore, based on the consensus recommendation of the Permitting and Compliance Issues Task Force, we urge EPA to allow up to 15 years for water quality standards to be met and to include a provision in the regulation stating that compliance schedules in NPDES permits for achievement of final effluent limitations based on the water quality criteria being promulgated may not extend beyond the compliance deadline for the standards (SWRCB, 1995, Part VI). The 5-year time frame assumes that a rapid response through source control, treatment plant operational changes, and/or major structural improvements is possible. However, once a decision is made to proceed with a project, planning, financing, design and construction can take more than 5 years. Further, we believe that a longer time frame may be suitable in cases where TMDLs are necessary and/or a watershed management program is underway but not complete. In such cases, it may make more sense for dischargers to pursue actions other than end-of-pipe treatment, such as monitoring, pollution prevention programs, water-effect ratio studies, investigation of pollutant trading opportunities, etc. (We also would like to point out that, in such cases, interim limits may be more appropriate than final effluent limits with compliance schedules.) This

is particularly true for pollutants which are not easily controlled (short of adding advanced treatment) through traditional industrial waste controls, and which must be reduced through new and innovative means (for instance, public education programs, installation of BMPs, etc.). A 15-year time frame is also consistent, we believe, with the guidance to EPA Regions issued by Assistant Administrator for Water Robert Perciasepe in August 1997, which directs States to submit schedules for developing TMDLs for all listed waters over an 8 to 13 year time period (U.S. EPA, 1997d). As this time frame does not include the implementation of measures to comply with Waste Load Allocations and Load Allocations to be developed through the TMDL process, we believe that even the 15-year time frame is optimistic for meeting water quality standards in all impaired water bodies, especially given the small number initiated in California to date and the large number of water bodies listed as impaired on California's 303(d) list.(*1)

(*1) 386 water bodies were listed by the state of California on the 303(d) list as of 1996 (SWRCB, 1996). Many of these water bodies were listed for multiple pollutants or stressors.

Response to: CTR-035-037

See response to CTR-027-008b.

Comment ID: CTR-036-010a
Comment Author: County of Orange
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: G-02 Compliance Schedules
References: Letter CTR-036 incorporates by reference letters CTR-013, CTR-018, CTR-031, CTR-034 and CTR-040
Attachments? N
CROSS REFERENCES I

Comment: We are concerned that the five-year compliance period for stormwater discharges to meet the criteria is untenable. The linkage between the application of best management practices and water quality benefits is long term and will thus be hard to demonstrate. Even in a direct product substitution situation, such as the removal of leaded gasoline from fuels, data from Orange County shows a very slow and long-term reduction in lead concentrations in our water bodies over multiple years.

Response to: CTR-036-010a

See response to CTR-013-007b.

Comment ID: CTR-038-012
Comment Author: Sonoma County Water Agency
Document Type: Sewer Authority
State of Origin: CA
Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? Y

CROSS REFERENCES

Comment: 11. EPA should provide for a compliance schedule of 15 years, consistent with the recommendation of the State Plan Public Task Forces, where dischargers with potential compliance problems are pursuing watershed management and other reasonable activities. The Preamble discusses a number of reasonable and responsible actions that a discharger might pursue to address toxic pollutants including, but not limited to: monitoring of sources, discharges and ambient waters; development of best management practices; development of pollution prevention programs; optimizing treatment plant operations for toxics removal; dilution studies; translator studies; water-effect ratio studies; risk assessments; TMDL studies; investigation of pollutant trading opportunities; and conduct of watershed management studies. On the other hand, the proposed rule states that dischargers should generally be able to comply with the rule within 3 years and, at most, will be allowed a maximum of 5 years from the issuance of a permit to comply. These are obviously conflicting principles. Where dischargers are pursuing reasonable and responsible actions, such as those previously listed, the CTR should allow permit authorities to defer placement of final effluent limits based on CTR criteria in permits, and instead provide for interim permit limits consistent with the recommendations of the State Plan Public Task Forces. Also, consistent with the Task Force recommendations, the CTR should allow up to 15 years from the date of the rule to achieve compliance rather than the 10 years allowed in the proposed CTR. Such a provision would have the result of encouraging dischargers to participate in activities, such as watershed management, that will further the goals of the Clean Water Act. The presently proposed rule would have the effect of discouraging such activities.

Response to: CTR-038-012

See responses to CTR-013-07b and CTR-027-008b.

Comment ID: CTR-039-007

Comment Author: San Francisco BayKeeper

Document Type: Environmental Group

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES

Comment: On behalf of San Francisco BayKeeper, its Stockton-based DeltaKeeper project, San Diego BayKeeper and Santa Monica BayKeeper (hereinafter "BayKeeper"), I am submitting these comments for consideration in finalizing EPA's proposed rule establishing water quality criteria for priority toxic pollutants for the waters of the State of California. The need for numeric criteria for priority toxic pollutants was identified by Congress ten years ago when, in October, 1987, it enacted amendments to the Clean Water Act mandating that States issue such criteria by not later than October 18, 1990. The State of California adopted a portion of the mandated criteria in April, 1991, which, in large part, EPA

approved. However, even that partial compliance was thwarted by the Sacramento Superior Court's overly broad decision vacating the State's decision based solely on a flawed economic analysis purportedly required by State law.

Now, seven years later, although appreciative of the complexity of the task required by Congress, BayKeeper is deeply concerned that EPA's proposed rule to cure the State's violation will undermine permit limits promulgated throughout the Bay area and other regions, allowing more pollution to be discharged to San Francisco Bay and other state waters in violation of the State and EPA's antidegradation policies. BayKeeper also is very concerned that EPA is promulgating criteria for mercury, dioxin and 13 other pollutants which are based on drastic underestimates of the quantity of fish consumed by recreational and subsistence anglers throughout the State of California. BayKeeper also believes that at this late date, the proposal to allow compliance schedules which could delay for up to ten years compliance with permit effluent limitations based upon the proposed criteria is inappropriate given the already seven year delay suffered by California's aquatic ecosystems and the people who depend upon the health of those systems for food and recreation.

V. EPA SHOULD NOT INCLUDE AUTHORITY FOR COMPLIANCE SCHEDULES IN ITS PROPOSED CRITERIA

As noted above, the proposed criteria, good or bad, are now seven years late. However, the State did have some criteria established for a three year period between 1991 and 1994. Thus, the regulated community has had ample notice of the criteria to come. indeed, a significant number of dischargers have been subject to permits based on approved criteria for upwards of five years. There is no scientific reason for EPA to perpetuate the delay and cause the State's aquatic ecosystems to further suffer toxic contamination that Congress mandated be addressed by October of 1990. Compliance schedules would be inconsistent with Congress' mandate. Moreover, compliance schedules would not be fair to those dischargers who already have been required to comply with the State's criteria issued in 1991. EPA should strike the compliance schedule authority from the proposed rule and leave the question of the need for compliance schedules to the State.

Response to: CTR-039-007

With respect to EPA's decision to include a compliance schedule, see response to CTR-002-010b. With respect to the relationship between EPA's compliance schedule and State adopted compliance schedules, see response to CTR-015-006. With respect to the comment that the CTR may degrade water quality in violation of antidegradation policy, see responses to CTR-002-010a (Category A; Antidegradation) and CTR-039-004 (Category C-14; Fish/Water Consumption). With respect to the comments on fish consumption, see response to CTR-002-002a (Category C-14; Fish/Water Consumption).

Comment ID: CTR-040-019

Comment Author: County of Sacramento Water Div

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References: Letter CTR-040 incorporates by reference letter CTR-027

Attachments? Y

CROSS REFERENCES

Comment: VI. Recommendation: Provide for a compliance schedule of 15 years, consistent with the recommendation of the State Plan Public Task Forces, where dischargers with potential compliance problems are pursuing watershed management and other reasonable actions.

* The Preamble discusses a number of reasonable and responsible actions that a discharger might pursue to address toxic pollutants including, but not limited to: monitoring of sources, discharges and ambient waters; development of best management practices; development of pollution prevention programs; optimizing treatment plant operations for toxics removal; dilution studies; translator studies, water-effect ratio studies; risk assessments; TMDL studies; investigation of pollutant trading opportunities; and watershed management studies.

* On the other hand, the proposed Rule states that dischargers should generally be able to comply with the Rule within 3 years and, at most, will be allowed a maximum of 5 years from the issuance of a permit to comply. These are obviously conflicting principles.

* Where dischargers are pursuing reasonable and responsible actions, such as those previously listed, the Rule should allow permit authorities to defer placement of effluent limits based on Rule criteria in permits, and instead provide for interim permit limits consistent with the recommendations of the State Plan Public Task Forces.

* Also, consistent with the State Plan Public Task Force's recommendations, the Rule should allow up to 15 years from the date of its promulgation to achieve compliance rather than the 10 years currently proposed. Such a provision would have the result of encouraging dischargers to participate in activities, such as watershed management and development of TMDLs, that will further the goals of the CWA. (In other documents, EPA has acknowledged that the TMDL process may take 8 - 13 years). The Rule, as it is presently proposed, will have the effect of discouraging such activities.

Response to: CTR-040-019

See response to CTR-027-008b.

Comment ID: CTR-041-012

Comment Author: Sacramento Reg Cnty Sanit Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES

Comment: 7. EPA Should Provide a Compliance Schedule of Fifteen Years

EPA should provide for a compliance schedule of fifteen years, consistent with the recommendation of the State Plan Public Task Forces, where dischargers with potential compliance problems are pursuing

watershed management and other reasonable activities. The Preamble discusses a number of reasonable and responsible actions that a discharger might pursue to address toxic pollutants including, but not limited to; monitoring of sources, discharges and ambient waters; development of best management practices; development of pollution prevention programs; optimizing treatment plant operations for toxics removal; dilution studies, translator studies; water-effect ratio studies, risk assessments; TMDL studies; investigation of pollutant trading opportunities; and conduct of watershed management studies. On the other hand, the proposed rule states that dischargers should generally be able to comply with the rule within three years and, at most, will be allowed a maximum of five years from the issuance of a permit to comply. These are obviously conflicting principles. Where dischargers are pursuing reasonable and responsible actions, such as those previously listed, the CTR should allow permit authorities to defer placement of final effluent limits based on CTR, criteria in permits, and instead provide for interim permit limits consistent with the recommendations of the State Plan Public Task Forces. Also, consistent with the Task Force recommendations, the CTR should allow up to fifteen years from the date of the rule to achieve compliance rather than the five years allowed in the proposed CTR. Such a provision would have the result of encouraging dischargers to participate in activities, such as watershed management, that will further the goals of the Act. The presently proposed rules will have the effect of discouraging such activities.

Response to: CTR-041-012

See response to CTR-027-008b.

Comment ID: CTR-043-010

Comment Author: City of Vacaville

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? Y

CROSS REFERENCES

Comment: 10. EPA should provide for a compliance schedule of 15 years, consistent with the recommendation of the State Plan Public Task Forces. The Preamble discusses a number of reasonable and responsible actions that a discharger might pursue to address toxic pollutants including, but not limited to: monitoring of sources, discharges and ambient waters; development of best management practices; development of pollution prevention programs; optimizing treatment plant operations for toxics removal; dilution studies; translator studies; water-effect ratio studies; risk assessments; TMDL studies; investigation of pollutant trading opportunities; and conduct of watershed management studies. On the other hand, the proposed rule states that dischargers should generally be able to comply with the rule within 3 years and, at most, will be allowed a maximum of 5 years from the issuance of a permit to comply. These are obviously conflicting principles. Where dischargers are pursuing reasonable and responsible actions, such as those previously listed, the CTR should allow permit authorities to defer placement of final effluent limits based on CTR criteria in permits, and instead provide for interim permit limits consistent with the recommendations of the State Plan Public Task Forces. Also, consistent with the Task Force recommendations, the CTR should allow up to 15 years from the date of the rule to achieve compliance rather than the 5 years allowed in the proposed CTR. Such a provision would have

the result of encouraging dischargers to participate in activities, such as watershed management, that will further the goals of the Act. The presently proposed rule would have the effect of discouraging such activities.

Response to: CTR-043-010

See response to CTR-027-008b.

Comment ID: CTR-044-011

Comment Author: City of Woodland

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? Y

CROSS REFERENCES

Comment: We have reviewed the proposed CTR and offer the following comments:

10. EPA should provide for a compliance schedule of 15 years, consistent with recommendation of the State Plan Public Task Forces. The Preamble discusses a number of reasonable and responsible actions that a discharger might pursue to address toxic pollutants including, but not limited to: monitoring of sources, discharges and ambient waters; development of best management practices; development of pollution prevention programs; optimizing treatment plant operations for toxics removal; dilution studies; translator studies; water-effect ratio studies; risk assessments; TMDL studies; investigation of pollutant trading opportunities; and conduct of watershed management studies. On the other hand, the proposed rule, states that dischargers should generally be able to comply with the rule within 3 years and, at most, will be allowed a maximum of 5 years from the issuance of a permit to comply. These are obviously conflicting principles. Where dischargers are pursuing reasonable and responsible actions, such as those previously listed, the CTR should allow permit authorities to defer placement of final effluent limits based on CTR criteria in permits, and instead provide for interim permit limits consistent with the recommendations of the State Plan Public Task Forces. Also, consistent with the Task Force recommendations, the CTR should allow up to 15 years from the date of the rule to achieve compliance rather than the 5 years allowed in the proposed CTR. Such a provision would have the result of encouraging dischargers to participate in activities, such as watershed management, that will further the goals of the Act. The presently proposed rule would have the effect of discouraging such activities.

Response to: CTR-044-011

See response to CTR-027-008b.

Comment ID: CTR-045-003

Comment Author: Sausalito-Marín Sanitary Dist.

Document Type: Sewer Authority

State of Origin: CA

Represented Org:
Document Date: 09/24/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? Y
CROSS REFERENCES

Comment: The District supports many of the items included in the proposed CTR:

The inclusion of a provision to allow compliance schedules in permits. It is suggested that this provision be modified to allow Regional Water Quality Control Boards (RWQCBS) to include compliance schedules of up to 15 years in permits, if they deem it appropriate.

Response to: CTR-045-003

See response to CTR-027-008b.

Comment ID: CTR-052-020
Comment Author: East Bay Dischargers Authority
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-02 Compliance Schedules
References: Letter CTR-052 incorporates by reference letters CTR-035 and CTR-054
Attachments? Y
CROSS REFERENCES

Comment: C. RECOMMENDATIONS FOR MODIFICATIONS TO THE CTR AND EA

EPA should provide for compliance schedules of up to 15 years. This would be consistent with the consensus recommendation of the State Plan Public Task Forces, and allow dischargers the necessary flexibility to develop cost effective solutions prior to considering end-of-pipe treatment options.

Response to: CTR-052-020

See response to CTR-027-008b.

Comment ID: CTR-053-004
Comment Author: Heal the Bay
Document Type: Environmental Group
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-02 Compliance Schedules
References: Letter CTR-053 incorporates by reference letter 6 and the comments on Dioxin, copper, and

the compliance schedule from letter CTR-002

Attachments? N

CROSS REFERENCES

Comment: We also agree with the concerns of our colleagues regarding the allowance of compliance schedules in permits to meet the California Toxics Rule. Compliance schedules are required in enforcement orders for any exceedance of numeric criteria. We, therefore, agree with and incorporate by reference CBE's comments on compliance schedules.

Response to: CTR-053-004

See response to CTR-002-010b.

Comment ID: CTR-054-012

Comment Author: Bay Area Dischargers Assoc.

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? Y

CROSS REFERENCES

Comment: EPA should provide for a compliance schedule of 15 years, consistent with the recommendation of the State Plan Public Task Forces, where dischargers with potential compliance problems are pursuing watershed management and other reasonable activities. The Preamble discusses a number of reasonable and responsible actions that a discharger might pursue to address toxic pollutants including, but not limited to: monitoring of sources, discharges and ambient waters; development of best management practices; development of pollution prevention programs; optimizing treatment plant operations for toxics removal; dilution studies; translator studies; water-effect ratio studies; risk assessments; TMDL studies; investigation of pollutant trading opportunities; and conduct of watershed management studies. On the other hand, the proposed rule states that dischargers should generally be able to comply with the rule within 3 years and, at most, will be allowed a maximum of 5 years from the issuance of a permit to comply. These are obviously conflicting principles. Where dischargers are pursuing reasonable and responsible actions, such as those previously listed, the CTR should allow permit authorities to defer placement of final effluent limits based on CTR criteria in permits, and instead provide for interim permit limits consistent with the recommendations of the State Plan Public Task Forces. Consistent with the Task Force recommendations, the CTR should allow up to 15 years from the date of the rule to achieve compliance rather than the 5 years allowed in the proposed CTR. Such a provision would have the result of encouraging dischargers to participate in activities, such as watershed management, that will further the goals of the Act. The presently proposed rules will have the effect of discouraging such activities.

Response to: CTR-054-012

See response to CTR-027-008b.

Comment ID: CTR-056-010
Comment Author: East Bay Municipal Util. Dist.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/22/97
Subject Matter Code: G-02 Compliance Schedules
References: Letter CTR-056 incorporates by reference letter CTR-054
Attachments? N
CROSS REFERENCES

Comment: Second, EBMUD would like to express to EPA its support for inclusion of:

* The inclusion in the rule of a provision allowing compliance schedules in NPDES permits (although this provision should be modified to enable RWQCBs to include compliance schedules of up to 15 years in permits if it is determined to be appropriate).

Response to: CTR-056-010

See response to CTR-027-008b.

Comment ID: CTR-058-007
Comment Author: Western States Petroleum Assoc
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? Y
CROSS REFERENCES

Comment: Compliance Schedules. WSPA supports EPA's recognition of the need for granting appropriate but flexible compliance schedules, with timeframes up to and including five years. This is especially true in cases when treatment technology is not available and must be developed to deal with a specific pollutant which has not been regulated in the permit previously.

WSPA members have detailed and intimate personal experience with the struggle and timeframe needed to come into compliance with highly restrictive and challenging water-quality based effluent limitations (WQBELs). WSPA and the SFRWQCB have collaborated on the detailed studies (which include studies of the significant secondary impacts) needed to meet the very stringent selenium limits set for Bay Area refineries. Selenium is a contaminant which typically occurs in refinery wastewaters at concentrations much less than 0.5 mg/L (roughly the practical level for heavy metal treatment technology when our studies begin). Its chemistry is very complex and was not well understood when industry began its studies.

The timeframe for the selenium studies and compliance schedule is as follows:

1. 3rd quarter 1992: WSPA members begin meeting to develop technology to meet RWQCB refinery selenium limits. Studies begin approximately the end of 1992.
2. 2nd quarter 1993: WSPA invites the RWQCB to participate in the selenium studies. Annual interim reports to RWQCB are made.
3. 3rd quarter 1995. The consolidated WSPA technology studies are completed and reported to the RWQCB.
4. 1995/1996. Individual refineries pilot the technology(ies) of their choice.
5. July 31, 1998: compliance deadline for new limits; meanwhile interim limits apply.

RWQCB staff participated in our assessment and development of available technology options. One of the primary reasons for the technology studies was to pursue alternatives to the iron coprecipitation process because this process generates vast quantities of potentially "toxic" solid waste (using California definitions). In addition to the WSPA coordinated studies, two refineries actively pursued other promising technologies specific to their facilities. These technologies were ultimately dropped due to technical deficiencies. Evaluating the alternatives took time and was a valuable part of the study even though, in the end, they did not workable results. In any case, the refineries still anticipate meeting the compliance deadline. We think the regulatory community would agree with us that even given the significant resources devoted to assessing the efficacy and appropriateness of various technologies, these studies take time to do well. However, to address complex and difficult WQBELS, this anecdote illustrates the need for permit writers to have the flexibility to work with dischargers on compliance schedules which in some cases may be very lengthy.

The use of compliance schedules is amply supported by existing regulations and practice, and makes for a practical approach to achieving the goals of the Act.

Response to: CTR-058-007

Comment ID: CTR-059-013

Comment Author: Los Angeles County Sanit. Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: G-02 Compliance Schedules

References: Letter CTR-059 incorporates by reference letter CTR-035

Attachments? Y

CROSS REFERENCES

Comment: The Sanitation Districts supports the inclusion in the draft CTR of a provision authorizing the use of compliance schedules in NPDES permits. We agree with the rationale for its inclusion, since immediate and full compliance by dischargers simply is not generally possible or practicable. We strongly urge EPA, however, to consider modifying this provision to authorize the issuance of permits

containing compliance schedules of up to 15 years. We believe that including the authority in the CTR would foster greater opportunities to pursue pollution prevention avenues before moving to extreme measures, such as advanced end-of-pipe treatment. The ability to allow longer compliance schedules is especially critical, we believe, to the success of watershed management projects and the development of TMDLs (especially phased TMDLs).

Response to: CTR-059-013

See response to CTR-027-008b.

Comment ID: CTR-060-005

Comment Author: San Diego Gas and Electric

Document Type: Electric Utility

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES

Comment: PROVISIONS SDG&E DOES NOT SUPPORT

As described in the following comments SDG&E does not support the following provisions:

Compliance Periods No Longer than 5 Years

The preamble and rule describe the use of compliance schedules by existing dischargers where they find that they cannot immediately comply with a new more restrictive water quality based effluent limit (see 62 Fed. Reg. at 42187, Col. 1-3; and 62 Fed. Reg. at 42208, Col. 1-3). SDG&E supports the use of compliance schedules. However, the preamble and rule limit the term of compliance schedules to five years from the issuance of the new effluent limit. This duration may not be adequate where a TMDLA/VLA/LA process is necessary or may not accommodate the time needed to investigate alternative compliance methods, develop and obtain approval of site specific criteria, design and engineer necessary modifications to the facility and to obtain necessary financing. The SWRCB's Task Forces' Final Report ("Reports of the Public Advisory Task Forces to the State Water Resources Control Board Regarding the Development of the Inland Surface Waters Plan and the Enclosed Bays and Estuaries Plan"; October, 1995) recommended the use of compliance periods up to 15 years. SDG&E recommends that the rule be modified to allow for up to 15 year durations for compliance schedules.

Response to: CTR-060-005

See response to CTR-027-008b.

Comment ID: CTR-066-004

Comment Author: Delta Diablo Sanitation Dist.

Document Type: Sewer Authority

State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? N

CROSS REFERENCES

Comment: Our preliminary review of the CTR finds several areas that we believe are positive changes and will enhance the rulemaking. The areas that we support as now written are as follows:

* The inclusion of a provision allowing compliance schedules in permits in the rule, although the provision should be modified to allow the Regional Water Quality Control Boards (RWQCBs) to include compliance schedules of up to 15 years in permits if they deem it appropriate.

Response to: CTR-066-004

See response to CTR-027-008b.

Comment ID: CTR-067-005
Comment Author: Ojai Valley Sanitary District
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? N

CROSS REFERENCES

Comment: * Having just completed an eight (8) year, twenty-eight (28) million dollar project to meet more stringent effluent limits, OVSD strongly endorses the inclusion in the draft CTR of a provision authorizing compliance schedules of up to 15 (fifteen) years in NPDES permits. Tremendous effort and time are required for a POTW to sample for and identify potential pollutants, negotiate the permit(s) with the applicable regulatory agencies, perform the necessary environmental studies to determine the impact of the pollutant(s) observed, identify potential solutions/mitigation measures and their costs, and then to design and build additional treatment facilities. Although 15 (fifteen) years may not always need to be granted, allowing the flexibility of extended compliance schedules would be very beneficial to OVSD (and other POTWs) and the Regional Water Quality Control Boards. This is true not only for the reasons stated above, but also because extended compliance schedules would allow time for the development and implementation of the relatively new watershed-based management approach.

Response to: CTR-067-005

See response to CTR-027-008b.

Comment ID: CTR-081-002c
Comment Author: West County Agency
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? N
CROSS REFERENCES G-04
C-24a
C-22
G-09
C-01a
C-08a
G-05

Comment: * There are many aspects of the CTR that we support. These include: a) Application of interim limits while special studies are performed. b) Approach to water effect ratios for determining site specific criteria. c) Inclusion of provision for compliance schedules. However, this should be modified to allow inclusion of compliance schedules of up to 15 years in permits if deemed appropriate by Regional Boards. d) Metals criteria expressed as dissolved rather than total recoverable concentrations. e) EPA's guidance to Regional Boards regarding use of translators. f) EPA's proposal to create a rebuttal presumption for Water Effects Ratios, g) Revised human health criteria for mercury h) Decision to not promulgate human health criteria at this time in light of issues surrounding health criteria for arsenic. i) EPA's policies regarding application of mixing zones and dilution credits.

Response to: CTR-081-002c

See response to CTR-027-008b.

Comment ID: CTR-082-002
Comment Author: City of Burbank
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? N
CROSS REFERENCES

Comment: The subject rule has a significant impact on our facility discharge and the citizens of the City. We therefore present the following comments for your consideration to re-open the comment period for this rule in order to facilitate a more complete review by public and in particular by those in the POTW community:

* The inclusion of a provision allowing compliance schedules in permits in the rule, should be modified

to allow the Regional Water Quality Control Board's (RWQCB's) to include compliance schedule of up to 15 years if they deem it is appropriate.

Response to: CTR-082-002

See response to CTR-027-008b.

Comment ID: CTR-085-005

Comment Author: Camarillo Sanitary District

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/24/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES

Comment: On several aspects of the California Toxics Rule, the District is in agreement with CASA and SCAP comments:

* The inclusion of a provision allowing compliance schedules in permits in the rule although the provisions should be modified to allow the Regional Water Quality Control Boards (RWQCB) to include compliance schedules of up to 15 years in permits if they deem it appropriate.

Response to: CTR-085-005

See response to CTR-027-008b.

Comment ID: CTR-086-004i

Comment Author: EOA, Inc.

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org: California Dent

Document Date: 09/26/97

Subject Matter Code: G-02 Compliance Schedules

References: Letter CTR-086 incorporates by reference letter CTR-035

Attachments? N

CROSS REFERENCES G-01

C-22

G-09

C-24a

C-24

K-03

G-04

G-05

Comment: Regulatory Flexibility and Relief

CDA supports language in the CTR Preamble that references and endorses recommendations of the State Task Forces including in part the use of.

* reasonable potential analyses * dissolved metals criteria * translators * water effects ratios * site specific objectives * innovative TMDL processes such as effluent trading * performance based interim limits * chronic and acute mixing zones, and * compliance schedules in NPDES permits.

Response to: CTR-086-004i

See response to CTR-027-008b.

Comment ID: CTR-089-001f

Comment Author: Las Virgenes Mncpl Water Dist.

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/24/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES C-22

C-01a

C-08a

G-05

K-01

G-09

Comment: The draft California Toxics Rule (CTR) is clearly the product of substantial effort by USEPA staff, and we applaud this effort and its intent. On several issues of concern to public utilities, the CTR strikes a good balance between the need to promulgate standards and the need to base those standards on sound science. Examples include the use of dissolved concentrations rather than the total recoverable concentrations for metals, the deferral of human health criteria for arsenic until adequate information is available, and the revision of the human health criterion for mercury. We are also pleased with the CTR's guidance and flexibility, on mixing zones and dilution credits, total maximum daily loads (TMDLs), compliance schedules, and translators.

Response to: CTR-089-001f

EPA appreciates these comments for providing support for EPA's allowance of compliance schedules in NPDES permits.

Comment ID: CTR-090-002e

Comment Author: C&C of SF, Public Utl. Commis.

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References: Letter CTR-090 incorporates by reference letters CTR-035 and CTR-054

Attachments? Y

CROSS REFERENCES C-17a

C-24a

C-22

G-05

G-04

Comment: There are many features of the proposed rule which we strongly endorse, specifically:

- * the use of the latest IRIS values for human health criteria, it is essential that the criteria be based on the latest scientific and environmental information;
- * recognition that the dissolved fraction of metals, rather than the total recoverable, better reflect the aquatic toxicity of metals;
- * recognition that for certain metals (e.g. copper and zinc) ambient water chemistry is critical in determining toxicity thereby endorsing the Water Effects Ratio;
- * recognition and strong endorsement of the multi-tiered mixing zones for acute, chronic and human health effects; and
- * recognition of interim limits and compliance schedules as appropriate implementation strategies,

Response to: CTR-090-002e

See response to CTR-027-008b.

Comment ID: CTR-090-024

Comment Author: C&C of SF, Public Util. Commis.

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-02 Compliance Schedules

References: Letter CTR-090 incorporates by reference letters CTR-035 and CTR-054

Attachments? Y

CROSS REFERENCES

Comment: Compliance Schedules -- The PUC supports the use of compliance schedules as part of the NPDES permit process, however, we oppose establishing any ceiling in the CTR for the duration of such schedules. If water shed based solutions are to be implemented, these will require a much as a 10 to 15 years to begin to show significant results. it would be most unwise to burden small contributors of toxicants with large expenses, until such time as the efficacy of water shed approaches can be established in the specific water sheds.

Even in cases where there is a clear and immediate indication that a POTW will have to undertake significant process upgrading to achieve CTR based WQBEL effluent limitations, the five year period for compliance is simply unrealistic. It would be difficult for a municipality or regional sanitation agency to arrange financing, plan and undertake CEQA procedures, design, construct and run process shake down within five years for any major wastewater project.

Rather than incorporate a compliance schedule ceiling in the CTR, the CTR should simply state that compliance schedules can be established by the RWQCBs on a case by case basis.

Response to: CTR-090-024

See response to CTR-027-008b. With respect to the relationship between EPA's compliance schedule and State adopted compliance schedules see response to CTR-015-006.

Comment ID: CTR-092-009

Comment Author: City of San Jose, California

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: G-02 Compliance Schedules

References: Letter CTR-092 incorporates by reference letter CTR-035

Attachments? Y

CROSS REFERENCES

Comment: Schedules of Compliance

The City endorses compliance schedules as an interim sequence of events which lead to compliance with water quality-based effluent limitations. The City further supports the authorizing compliance schedule provision contained in the CTR but advocates a period of 15 years to comply with such limitations. The 15 year time period is consistent with 1997 guidance issued by Assistant Administrator Robert Perciasepe regarding the development of TMDLs over an 8 to 13 year timeframe.

Response to: CTR-092-009

See response to CTR-027-008b.

Comment ID: CTR-095-004

Comment Author: M. Ruth Uiswander

Document Type: Citizen

State of Origin: CA

Represented Org:

Document Date: 10/02/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES

Comment: Also, it is unconscionable to postpone compliance with the new proposals for up to 10 years. This is unacceptable. Facts must be faced and prevention measures to taken now. Cancer is epidemic! We must act!

Response to: CTR-095-004

See response to CTR-002-010b.

Comment ID: CTR-104-003

Comment Author: Lucy Nelson, et. al.

Document Type: Citizen

State of Origin: CA

Represented Org:

Document Date: 10/15/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES

Comment: "Compliance schedules" could postpone compliance for up to 10 years. There has already been a 7 year delay in reaching this proposal stage, so further procrastination is completely unacceptable.

Response to: CTR-104-003

See response to CTR-002-010b.

Comment ID: CTR-106-003

Comment Author: Robert Brown

Document Type: Citizen

State of Origin: CA

Represented Org:

Document Date: 10/28/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES

Comment: "Compliance schedules" could postpone compliance for up to 10 years. There has already been a 7 year delay in reaching this proposal stage, so further procrastination is completely unacceptable.

Response to: CTR-106-003

See response to CTR-002-010b.

Comment ID: CTR-107-002b
Comment Author: Brian E. Hill
Document Type: Citizen
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? Y
CROSS REFERENCES E-01
E-01n

Comment: On September 17, I attended a hearing on the proposed CTR at the EPA's regional office in San Francisco. Here are some key issues from the testimony at that hearing:

- * Some of the limits are below normal detection limits, therefore agencies have no background data in order to perform accurate attainability analysis.
- * The cost of implementation by the EPA is grossly underestimated. The economic analysis shows at maximum implementation cost of \$87 million. If preliminary estimates by publicly owned treatment works (POTW) are correct, implementation of the CTR will far exceed the \$100 million provision of the Porter-Cologne Act. If this is the case, feasibility of implementation will be in jeopardy. The City of Merced, CA estimates that their additional cost would be \$4 million annually. Merced has a very small treatment facility.
- * Robert Reid, speaking on behalf of California Association of Sanitation Agencies(CASA), said that four San Francisco Plants estimate their total implementation costs to be \$160 million annually.
- * Charles Batts of Bay Area Dischargers Authority (BADA) estimated five BADA POTWs costs to be \$12 million per year to meet the strict limit on copper and \$56 million per year to meet the organics limit.
- * The Regional Water Quality Control Board testified that San Francisco discharges twenty percent of the four percent discharged into the San Francisco Bay by POTWS, noting that POTWs are only a minor part of the volume discharged into the Bay. Thus, the reduction to the prescribed limits would cause a negligible decrease in the total mass of pollutants discharged.
- * The City of Sacramento projects a \$200 million annual cost will be required to meet the copper limit.

All of the testimony at the hearing echoed these concerns. I am sure that you have access to a transcript. The Clean Water Act has been and is instrumental in cleaning up our rivers, lakes, bay and estuaries. We can continue on this steady path by setting gradual attainable limits and through increased public education. Limits on pollutants should continue to get stricter, but this has to occur on a gradual curve that will not place an unreasonable burden on the individual taxpayer.

Response to: CTR-107-002b

See response to CTR-107-002a.

Comment ID: CTR-109-004
Comment Author: Maggie Miller
Document Type: Citizen
State of Origin: CA
Represented Org:
Document Date: 12/01/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? N
CROSS REFERENCES

Comment: Fourth, the proposed new rule also contemplates "compliance schedules" could postpone up to ten years compliance with the proposed new rule.

Response to: CTR-109-004

See response to CTR-002-010b.

Comment ID: CTR-110-003
Comment Author: Judith A. Brown
Document Type: Citizen
State of Origin: CA
Represented Org:
Document Date: 12/02/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? N
CROSS REFERENCES

Comment: Also, anti-pollutant compliance schedules need to be immediate and continuing, not ten years from now.

Response to: CTR-110-003

See response to CTR-002-010b.

Comment ID: CTRH-001-011
Comment Author: Greg Karras
Document Type: Public Hearing
State of Origin: CA
Represented Org: Comm. for Better Environ.
Document Date: 09/17/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? N

CROSS REFERENCES

Comment: Next, compliance schedule.

EPA appears to be saying that it is only allowing state authorities to decide whether to put compliance schedules in permits which grant permission to pollute over the established criteria for up to 10 years.

However, we know that when the Unocal refinery here sued and paid the state authorities for permission to dump excess selenium for five years, EPA joined CBE, the City of San Francisco, the City of Richmond and others in court to support the public's right to protect our bay and protect our health.

Our question here is, has EPA waffled in its commitment to support our rights to be involved in a meaningful way in enforcement of water quality standards to protect our health?

Response to: CTRH-001-011

See response to CTR-002-010b.

Comment ID: CTRH-001-024a

Comment Author: Michelle Pla

Document Type: Public Hearing

State of Origin: CA

Represented Org: S.F. Public Utilities Com

Document Date: 09/17/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES g-05

c-22

c-24a

c-17a

Comment: MS. PLA: My name is Michelle Pla. I'm with the Public Utilities Commission, City and County of San Francisco.

I made the comment on my card that I also said that I would try to be constructive, and so I'm going to follow my mentor here, Phil Bobel, and say that there are some things in this rule that we're very pleased to see.

We're very pleased to see use of the latest scientific information, particularly the use of latest IRIS, I-R-I-S, numbers-for human health. We're very pleased that you're using dissolved versus total recoverable form for the metals.

We're very pleased to see recognition of the water effects ratios. We're pleased to see recognition for a multi-tiered mixing zone for acute and chronic human health effects and hope that the state pays particular attention to that.

We do have a problem with the way you've described compliance schedules and hope to be working strictly by the state on that as well. We think that the five-year system is fairly shortsighted, and -we can't even do FMDSLs in five years.

Response to: CTRH-001-024a

See response to CTR-027-008b.

Comment ID: CTRH-001-039c
Comment Author: Robert Reid
Document Type: Public Hearing
State of Origin: CA
Represented Org: CASA
Document Date: 09/17/97
Subject Matter Code: G-02 Compliance Schedules
References:
Attachments? N
CROSS REFERENCES C-24a
G-04

Comment: I've been saving the good news for last.

Fourth, and by no means last in priority for CASA, we wish to register our support for several parts of the preamble to the CTR.

We support application of interim limits in NPDES permits while TMDLs and other special studies are being performed.

We also support EPA's approach to water effects ratios for determining site-specific criteria.

We also support the inclusion of a provision allowing the compliance schedules in permits in the rule, although we recommend that it be modified to allow the regional boards to include compliance schedules of up to 15 years in permits, if they deem it appropriate.

Thank you for the opportunity to present our views. As I said earlier, we will be submitting detailed comments on the proposed rule by the end of the comment period, which hopefully will be extended in response to our and others' requests.

Response to: CTRH-001-039c

See response to CTR-027-008b.

Comment ID: CTRH-001-052
Comment Author: Michael Lozeau
Document Type: Public Hearing
State of Origin: CA
Represented Org: S.F. Bay/Delta Keeper

Document Date: 09/17/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES

Comment: The compliance schedules, I would definitely question the need. There was a question reflected earlier, whether we need compliance schedules authorized by this federal rule.

It seems to me that EPA is trying to fix an absence of criteria. We have been waiting a long time for these criteria. They were supposed to be in place in -- it was '93, I think. The deadline, technically speaking, is about four years behind, and will probably be five by the time it's done.

To have another ten years before we actually see any results is a little frustrating, so I for one don't think compliance schedules, whether the agencies, for better or worse -- and with some help from the dischargers, they have not been able to issue the criteria required by federal law. And I guess the uncertainty of that delay should go to the benefit of the bay and all the waters of the state. So on compliance schedules, I think at this point they are a little bit too late, especially in the standards.

That's not to say in particular instances that the individual boards can't figure out ways of using enforcement authority to devise rational schedules where people for whatever reason have not been able to adjust the facilities to meet new standards.

But in the standards themselves, I think history shows that is not something that's going to cripple the various industries and dischargers, that it can be adjusted through enforcement processes.

Response to: CTRH-001-052

See response to CTR-002-010b.

Comment ID: CTRH-002-011a

Comment Author: Lisa Ohlund

Document Type: Public Hearing

State of Origin: CA

Represented Org: Alliance of So. CA POTWs

Document Date: 09/18/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES G-04

C-22

K-01

Comment: Now, I'd briefly like to touch on several issues of importance to SCAP members. In addition, we will be submitting written comments before the close of the public comment period.

I'd like to begin by mentioning our support for several provisions included in the draft CTR, and those include the provision authorizing the use of compliance schedules -- although we don't necessarily agree

with the time period -- the expression of metals criteria as dissolved rather than totally recoverable, and discussion in the preamble supporting the use of interim limits in permits, while the total maximum daily loads and other special studies are being performed.

Response to: CTRH-002-011a

See response to CTR-027-008b.

Comment ID: CTRH-002-014

Comment Author: Lisa Ohlund

Document Type: Public Hearing

State of Origin: CA

Represented Org: Alliance of So. CA POTWs

Document Date: 09/18/97

Subject Matter Code: G-02 Compliance Schedules

References:

Attachments? N

CROSS REFERENCES

Comment: And on compliance schedule time frames, we'd like to see that those are consistent with the State's proposal.

Response to: CTRH-002-014

See response to CTR-015-006.

Subject Matter Code: G-03 Design/Minimum Flows

Comment ID: CTR-003-004

Comment Author: City of Riverside

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/22/97

Subject Matter Code: G-03 Design/Minimum Flows

References:

Attachments? N

CROSS REFERENCES

Comment: 4) The use of the "harmonic mean flow" adds yet another level of conservatism to the standard setting process. As the response to the toxin is assumed linear with respect to concentration and additive over time, the use of this statistic seems inappropriate and overprotective.

Response to: CTR-003-004

EPA disagrees that the use of the harmonic mean flow is inappropriate and overprotective. Carcinogens, unlike non-carcinogens, do not have a threshold concentration where effects are only observed above certain concentrations. Exposure to carcinogens is best estimated by determining lifetime average exposure because carcinogens, as illustrated by the supporting toxicity data in the criteria documents, show a linear relationship of dose versus response. In other words, as exposure increases over time, a greater incidence of effects are observed. This means that exposure is cumulative over time. The human health criteria for carcinogens are based on the assumption of average exposure over a seventy year period (life expectancy assumption). The harmonic mean is the running average of all the flow data on record for a particular stream. EPA believes that averaging the entire flow record best approximates lifetime exposure. Thus, the Agency recommends the harmonic mean flow for determining long term exposure estimates when using steady-state modeling. EPA also notes that the final CTR does allow alternative flows to be used where supported by data and approved by EPA after EPA publishes for public comment a notice proposing such a change (40 CFR 131.38(d)(1)(iv)). Appropriate dynamic modeling is one such alternative that EPA would approve. The final CTR maintains the harmonic mean flow as the design flow for human health criteria for carcinogens. EPA also notes the commentor did not provide an alternative to the harmonic mean flow.

Further discussion on the basis for the harmonic mean flow is contained in the Technical Support Document for Water Quality-based Toxics Control (section 4.6 and Appendix D) and in "Design Stream Flows Based on Harmonic Means," Lewis A. Rossman, Jr. of Hydraulic Engineering, Vol. 116, No. 7, July 1990.

Comment ID: CTR-020-016

Comment Author: City of Stockton

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/24/97

Subject Matter Code: G-03 Design/Minimum Flows

References:

Attachments? Y

CROSS REFERENCES

Comment: II. Use of New Scientific Information

The City acknowledges and supports EPA's update of several water quality criteria including those for mercury, cadmium and arsenic. While a number of criteria were updated to reflect current scientific information, there are a few notable exceptions.

The following briefly addresses the key updates and omissions that should be addressed in the final publication of this rule.

5. Application of Criteria at Return Flows

The rule specifies that the criteria should be applied under various design flows that properly represent the acceptable exposures that may occur in the environment. Consistent with the National Guidelines, EPA recognized that it is inappropriate and unnecessary to apply the criteria in a "never to exceed" manner. Clearly, the information underlying the selection of the return frequency of once in three years, which was conservatively derived, demonstrates that periodic exceedance of the criteria is acceptable. However, in the rule, EPA states that these flows should only be used if the Regional Board has expressly determined that water quality criteria apply only above certain flows. Absent such a statement from the Regional Board, the criteria apply at all flows and no exceedance, no matter how minor, would be allowed. This provision (which will clearly lead to overly stringent application of criteria) is arbitrary and capricious.

If EPA is to adopt criteria and implementation procedures in place of state action, that regulatory package must be complete and appropriate considering the regulation as a whole. EPA is well aware that few Regional Boards have established specific return flows because the issue is addressed on a case-by-case basis. Moreover, as no specific flow is set to apply to wet weather events, the CTR would lead to the absurd conclusion that storm waters, prior to mixing with any surface waters, must comply with stringent water quality criteria.

EPA may not knowingly establish procedures that will lead to unnecessarily restrictive application of the criteria unrelated to actual use protection needs. The final rule should specify the criteria will only be applied to flows exceeding the design stream flows specified in the rule.

Response to: CTR-020-016

EPA disagrees that the low flow provisions in this rule are arbitrary and capricious. EPA notes that under the Water Quality Standards Regulation (see 40 CFR 131.13), States may adopt discretionary policies that affect the implementation of their water quality standards. Such policies may include the establishment of low flow provisions and are subject to EPA review and approval. However, where a State has not specified low flow provisions and has determined that the application of the criteria at all flows is appropriate State policy, EPA will defer to the State's expressed policy. This approach is consistent with Section 510 of the Clean Water Act which preserves State authority to adopt provisions for its waters that are more stringent than required by EPA.

Furthermore, EPA disagrees with the commenter's assertion that if a State's criteria apply at all flows, the

criteria could never be exceeded. EPA's aquatic life criteria are based on three interrelated components which include magnitude, duration, and frequency. EPA's longstanding position is that the criteria may not be exceeded more than once every three years on the average. This recurrence frequency takes into consideration the rates of ecological recovery from severe environmental stresses. Further discussions on this issue is contained in EPA's Technical Support Document for Water Quality-based Toxics Control (Chapter 2 and Appendix D).

Comment ID: CTR-027-005a

Comment Author: California SWQTF

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-03 Design/Minimum Flows

References: Letter CTR-027 incorporates by reference letters CTR-001, CTR-036 and CTR-040

Attachments? N

CROSS REFERENCES T

Comment: 5. The proposed rule restricts the State's regulatory flexibility in permitting by establishing averaging periods and low flow conditions, and directives regarding establishing effluent limits for criteria not being adopted as part of the CTR. USEPA has preempted the State's flexibility by establishing averaging periods for applying acute and chronic aquatic life and human health criteria, and by establishing low flow conditions that must be used in developing limits based on proposed criteria. These are implementation issues that should remain with the State regulatory authority.

Recommendation: The rule should be revised to delete all provisions that preempt the State's regulatory flexibility.

Response to: CTR-027-005a

EPA disagrees that the flow provisions contained in the final rule will limit State flexibility.

First, EPA notes that the State of California may develop alternative design flows for its waters provided that those alternative flows are scientifically defensible and protective of the designated uses of State waters. Such alternative flows will be subject to EPA review, approval, and public comment. However where the State has not adopted low flow provisions, the design flows specified in today's rule shall be implemented to ensure that the criteria will be implemented appropriately to provide environmental and human health protection.

As noted in the preamble of today's rule, EPA's Technical Support Document for Water Quality-based Toxics Control (the TSD) also recommends the use of dynamic models to perform wasteload allocations. EPA is clarifying that today's rule provides the State of California with the flexibility to utilize dynamic models to implement the federal criteria. The dynamic modeling techniques, as outlined in the TSD, will allow enable the determination of wasteload allocations that will meet the criteria in today's rule.

Comment ID: CTR-035-029

Comment Author: Tri-TAC/CASA

Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: G-03 Design/Minimum Flows
References:
Attachments? N
CROSS REFERENCES

Comment: pp. 42182-42183 -- Low Flow Values for Streams and Rivers We recommend that EPA not adopt the design flow values (e.g. 1Q10 or 1B3 for aquatic life acute criteria) for the CTR criteria. The values specified are not always appropriate. For instance, EPA proposes that the harmonic mean flow be applied with human health criteria for carcinogens. In contrast, EPA's Technical Support Document (U.S. EPA, 1991) states:

"However, for situations involving seasonally variable effluent discharge rates, hold-and-release treatment systems, and effluent-dominated sites, the harmonic mean may not be appropriate. In these cases, the effluent load and downstream flow are not independent (i.e., they are correlated). Modeling techniques can calculate an average daily concentration over a long period of time are more appropriate to determine the long-term exposure in these cases." Therefore, we recommend that EPA include these values in the Preamble as guidance instead of in the rule itself.

Response to: CTR-035-029

EPA agrees that the low flow values specified in the rule may not be appropriate in all instances as noted in the Agency's Technical Support Document for Water Quality-based Toxics Control (the TSD). Furthermore, EPA noted in the proposed rule (see section 131.38(c)(2)(ii)) that the low flows would apply in waters suitable for the establishment of low flow return frequencies such as free flowing streams and rivers. However, in general, EPA supports these flows as being appropriate in a majority of situations. Additionally, as noted in the preamble of today's rule, EPA is clarifying that today's rule provides the State of California with the flexibility to utilize dynamic modeling (as an alternative to steady state modeling) in implementing the criteria contained in today's rule. Therefore, EPA will retain the design flows as proposed, as these flows will ensure adequate implementation of the criteria included in today's rule in cases where the State does not have design flows in place or where the State does not utilize dynamic modeling.

Comment ID: CTR-036-007b
Comment Author: County of Orange
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: G-03 Design/Minimum Flows
References: Letter CTR-036 incorporates by reference letters CTR-013, CTR-018, CTR-031, CTR-034 and CTR-040
Attachments? N
CROSS REFERENCES C-26

Comment: We are concerned that EPA has preempted the State's flexibility by establishing averaging periods for applying acute and chronic aquatic life criteria and for establishing low flow conditions that must be used in developing limits based on the proposed criteria. We recommend that such implementation issues remain within State authority.

Response to: CTR-036-007b

See response to CTR-027-005a.

Comment ID: CTR-037-005

Comment Author: Hampton Roads Sanitation Dist.

Document Type: Sewer Authority

State of Origin: VA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-03 Design/Minimum Flows

References:

Attachments? N

CROSS REFERENCES

Comment: 5. EPA is requiring, by rule, that 1Q10 and 7Q10 receiving water flows be developed to implement acute and chronic water quality standards. This will therefore eliminate any flexibility that the State wishes to use when calculating reasonable potential to exceed standards and water quality-based limits. This will also limit permittees as to the approaches that can be used when modeling mixing zones. The use of 1Q10 and 7Q10 values is arbitrary and is not related in any way to how water quality criteria are developed or protection of the environment. These statistics were adopted merely because they were already in use by other programs and were therefore easily obtained. Use of these statistics does not recognize unique qualities of California's or any other states's waters, and therefore does not preclude overly stringent regulation. EPA must justify with data why these particular flows are required to implement water quality standards and why designated uses will not be protected if these flows are not used in NPDES permitting.

Response to: CTR-037-005

See response to CTR-027-005a. EPA disagrees that the 1Q10 and 7Q10 values are arbitrary. The hydrological basis for these flows were taken directly from EPA's Technical Support Document for Water Quality-based Toxics Control (See TSD, Appendix D for further information).

Comment ID: CTR-040-018b

Comment Author: County of Sacramento Water Div

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-03 Design/Minimum Flows

References: Letter CTR-040 incorporates by reference letter CTR-027

Attachments? Y

CROSS REFERENCES C-26; C-30; C-24e

Comment: V. Recommendation: Delete all provisions in the Rule that preempt the States flexibility in permitting. The Rule provides specific direction on the adoption of averaging periods, low flow values, effluent limitations for criteria not being adopted as a part of the Rule, and that the aquatic life criteria be applied to all waters irrespective of designated use, etc..

* The Preamble and the Rule's economic analysis make a point that the State has considerable flexibility in establishing permit limitations. In making, that point, EPA implies that the State may implement the criteria in a manner that would have little or no adverse economic impact on dischargers.

* However, the Rule contains a number of implementation provisions that are not required under Section 303(c)(2)(B), but serve to preempt the State's flexibility. These provisions include, but are not necessarily limited to the adoption of averaging periods and low flow values, directives regarding the establishment of effluent limitations for criteria that are not being adopted as a part of the Rule, and application of the aquatic life criteria to all waters irrespective of the designated use.

* Not only does EPA not have a duty to adopt these provisions, but also the provisions are more restrictive than those required by the CWA or EPA regulations, They clearly restrict the State's flexibility. In fact, other states have adopted, and EPA has approved, implementation provisions (e.g., averaging periods and low flow values) which are less restrictive.

* For these reasons, EPA should remove all such implementation provisions from the Rule.

Response to: CTR-040-018b

See response to CTR-027-005a.

Comment ID: CTRH-001-034c

Comment Author: Dave Brent

Document Type: Public Hearing

State of Origin: CA

Represented Org: CA Water Qual. Task Force

Document Date: 09/17/97

Subject Matter Code: G-03 Design/Minimum Flows

References:

Attachments? N

CROSS REFERENCES I-08; I-05

Comment: Thirdly, I'd like to touch upon implementation of the rule. My understanding is that the state's Inland Surface Waters and Enclosed Bays and Estuaries Plan will address implementation of the CTR. With this in mind, the CTR should serve as an enabling rule and allow the state and the dischargers flexibility in the implementation of objectives contained in the rule.

As I touched upon earlier in my opening remarks, EPA has included some enabling provisions in this rule that we support, such as use and determination of mixing zones and water effects ratios. From the stormwater perspective, we believe other important enabling provisions must be included to allow for regional flexibility in the implementation of our stormwater programs.

For example, enabling provisions should be included to allow flexibility in establishing compliance schedules for stormwater discharges and should allow flexibility for site-specific establishment of low-flow conditions and wet weather standards, and ranges of human health criteria depending on the use of individual receiving waters.

Response to: CTRH-001-034c

See response to CTR-027-005a.

Subject Matter Code: G-04 Interim Limits

Comment ID: CTR-003-005
Comment Author: City of Riverside
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/22/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? N

CROSS REFERENCES

Comment: 5) The concept of interim permit limits is a worthy one which we hope you retain.

Response to: CTR-003-005

EPA appreciates these comments providing support for EPA's discussion of interim limits in the preamble of the proposed CTR. EPA addressed some implementation issues in the preamble to the proposed rule to illustrate the discretion available to the State in its issuance of permits and effluent limits, however, this implementation issue is outside the scope of the rule. EPA supports the State's consideration of stakeholder Task Force recommendations in developing the State's policy (Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California) regarding interim limits. However, EPA is not recommending any specific method of calculating interim limits because EPA does not intend to limit the State's discretion in implementing the Clean Water Act.

Comment ID: CTR-005-003f
Comment Author: Novato Sanitary District
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/23/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? Y

CROSS REFERENCES C-22

C-24a
C-01a
G-09
G-05

Comment: 2. The following provisions of the rule are supported: (1) adoption of metals criteria as dissolved concentrations; (2) expression of the metals criteria as a function of the water-effect ratio; (3) adoption of the proposed new human health criterion for mercury; and (4) the Preamble discussions regarding metals translators, mixing zones, and interim permit limits.

Response to: CTR-005-003f

See response to CTR-003-005.

Comment ID: CTR-021-002a

Comment Author: LeBoeuf, Lamb, Green & MacRae

Document Type: Local Government

State of Origin: CA

Represented Org: City of Sunnyvale

Document Date: 09/25/97

Subject Matter Code: G-04 Interim Limits

References: Letter CTR-021 incorporates by reference letter CTR-035

Attachments? Y

CROSS REFERENCES C-24a

C-22

K-01

G-05

G-02

Comment: Sunnyvale is very supportive of many fine concepts advanced in the proposed CTR, and we join with CASA/Tri-TAC in complimenting the Agency on its proposed positions with regard to such matters as: (a) the use of interim effluent limitations in NPDES permits during the pendency of TMDL and other special studies; (b) the allowance of water effects ratios in adjusting the criteria for metals without the necessity for additional rulemaking to establish site-specific objectives; © the use of the dissolved state for the metals criteria; (d) the use of cooperative, intergovernmental, and stakeholder-involved approaches towards the development of TMDLs;(e) the allowance of dilution for both chronic and acute pollutants; and (f) the allowance of compliance schedules in NPDES permits.

Response to: CTR-021-002a

See response to CTR-003-005.

Comment ID: CTR-030-001

Comment Author: Utility Water Act Group

Document Type: Trade Org./Assoc.

State of Origin: DC

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-04 Interim Limits

References:

Attachments? Y

CROSS REFERENCES

Comment: Comments of the Utility Water Act Group on the Proposed California Water Quality Standards

The Utility Water Act Group (UWAG)(*1) submits these comments on EPA's proposed Water Quality Standards for the State of California, published in the Federal Register on August 5, 1997. (62 Fed. Reg. 42,160) (the California proposal). UWAG is interested in the proposed regulation because: (1) UWAG member companies in California will be directly affected by the proposed changes to the California water quality standards; and (2) many of the issues raised in the proposal have national implications, particularly as they relate to general implementation of the NPDES program.

As detailed in Section I below, UWAG finds many parts of the proposal reasonable and sensible, and endorses EPA's intentions as to those parts. However, as explained in Section 11, the proposal sets forth some propositions that are erroneous or technically deficient, and others that may lead to inappropriate implications or misinterpretations.

I. ISSUES UWAG SUPPORTS

A. UWAG Approves of Interim Permit Limits When a TMDL Study is Incomplete

UWAG agrees with EPA that interim permit limits - where WQBELs have otherwise been justified - are appropriate for pollutants that are the subject of an ongoing TMDL/WLA/LA or other special study. 62 Fed. Reg. at 42,185, col. 2. UWAG also agrees that past performance and future uncertainty are appropriate factors - although not the only possibly relevant factors to consider in determining interim permit limits. UWAG wishes to emphasize, however, that permit writers must not be encouraged to impose any WQBELS, including interim WQBELS, until they have obtained sufficient and reliable data with which to conclude that the discharge has a reasonable potential of causing an excursion of water quality standards. In short, EPA should emphasize in the final rule that interim limitations are not intended to supersede the obligation of a permit writer to perform a reasonable potential determination as a prerequisite to imposing a WQBEL.

(*1) UWAG is an association of 73 individual electric utilities and three national trade associations of electric utilities, the Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association. The individual utility companies operate power plants and other facilities that generate, transmit, and distribute electricity to residential, commercial, industrial, and institutional customers. The Edison Electric Institute is the association of the nation's investor-owned electric utilities. The National Rural Electric Cooperative Association is the association of nonprofit electric cooperatives supplying central station service through generation, transmission and distribution of electricity to rural areas of the United States. The American Public Power Association is the national trade association that represents publicly owned electric utilities in the United States. UWAG's purpose is to participate on behalf of its members in EPA's rulemakings under the CWA and in litigation arising from those rulemakings.

Response to: CTR-030-001

EPA agrees that the permit writer must have a reasonable basis to conclude whether the discharger has "reasonable potential" for causing or contributing to an excursion of an objective prior to setting water quality-based effluent limits. EPA addressed some implementation issues in the preamble to the proposed rule to illustrate the discretion available to the State in its issuance of permits and effluent limits, however, this implementation issue is outside the scope of the rule.

Comment ID: CTR-030-004b
Comment Author: Utility Water Act Group
Document Type: Trade Org./Assoc.
State of Origin: DC
Represented Org:
Document Date: 09/25/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? Y
CROSS REFERENCES G-02
I

Comment: D. EPA's Endorsement of Five-Year Compliance Schedules and Interim Permit Limits for Modifications is Appropriate

UWAG strongly supports EPA's recognition that modifications necessary to comply with new or more stringent effluent limitations may necessitate the use of five-year compliance schedules. 62 Fed. Reg. at 42,187, col. 3. UWAG believes, however, that in certain circumstances a longer compliance schedule may be appropriate. Steam electric facilities that need retrofits to meet water quality-based effluent limits (WQBELS) often require extensive engineering design and testing prior to the actual retrofit. Additionally, nuclear facilities must ensure that any design changes are compatible with Nuclear Regulatory Commission regulations. Therefore, the availability of five-year compliance schedules is certainly well-justified. Further, EPA should consider whether longer compliance schedules should be available, at least in some limited circumstances.

Additionally, UWAG strongly supports EPA's approval of interim permit limits for use in permit modifications. This flexibility will allow dischargers to stay in compliance while necessary process or design changes are carried out.

Response to: CTR-030-004b

See response to CTR-003-005.

Comment ID: CTR-032-002g
Comment Author: Las Gallinas Val. Sanitary Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: G-04 Interim Limits
References: Letter CTR-032 incorporates by reference letter CTR-035
Attachments? N
CROSS REFERENCES G-01
C-22
G-09
C-24a
C-24
K

G-05
G-02

Comment: Regulatory Flexibility and Relief

The District supports EPA's use of "sound science" and current data in developing the proposed criteria in the California Toxics Rule (CTR). The District strongly supports language in the Preamble that references and endorses recommendations of the State Task Forces including use in permitting of:

* reasonable potential analyses * dissolved metals criteria * translators * water effects ratios * site specific objectives * innovative TMDL processes such as effluent trading * performance based interim limits * chronic and acute mixing zones, and * compliance schedules in NPDES permits.

Response to: CTR-032-002g

See response to CTR-003-005.

Comment ID: CTR-034-012a

Comment Author: SCAP

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-04 Interim Limits

References: Letter CTR-034 incorporates by reference letter CTR-035

Attachments? N

CROSS REFERENCES K-01

Comment: * SCAP supports EPA's discussion in the Preamble regarding the use of interim permit limits while Total Maximum Daily Loads.(TMDLs) and other special studies are being performed. We strongly urge EPA to support the use of the SWRCB Permitting Task Force's recommended approach for deriving interim permit limits.

Response to: CTR-034-012a

See response to CTR-003-005.

Comment ID: CTR-035-002e

Comment Author: Tri-TAC/CASA

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-04 Interim Limits

References:

Attachments? N

CROSS REFERENCES C-22

C-01a

C-08a

G-05

G-09

K-01

C-24a

Comment: Second, we commend EPA for its inclusion in the CTR of several innovative and flexible regulatory approaches, such as metals criteria expressed as dissolved rather than total recoverable concentrations, and the revised human health criterion for mercury. In addition, in light of the issues surrounding the human health criteria for arsenic we support EPA's decision not to promulgate human health criteria at this time. With respect to implementation issues discussed in the Preamble, we support EPA's policies and guidance regarding the application of mixing zones and dilution credits, the use of interim permit limits while Total Maximum Daily Loads (TMDLs) and other special studies are being performed, and EPA's guidance to Regional Water Quality Control Boards (RWQCBs) that they may use any of the methods described in EPA's guidance document on the use of translators. We also support EPA's proposal to create a rebuttable presumption for Water Effects Ratios (WERs), allowing the RWQCBs and SWRCB to develop site-specific WERs that can be approved by EPA during the NPDES permit approval process. We believe that this approach will help facilitate the development of appropriate site-specific adjustments for metals criteria.

Response to: CTR-035-002e

See response to CTR-003-005.

Comment ID: CTR-035-033

Comment Author: Tri-TAC/CASA

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-04 Interim Limits

References:

Attachments? N

CROSS REFERENCES

Comment: p. 42185 -- Interim Limits We support the inclusion of the provision in the Preamble which supports the use of interim limits in NPDES permits while TMDLs and other special studies are being performed. We endorse the recommendation of the Permitting and Compliance Issues Task Force that interim effluent limits be calculated based on past performance plus future uncertainty (SWRCB 1995, Part VI). While recognizing that the State has discretion in determining how effluent limits are calculated, we recommend that EPA strengthen its statement of support for this approach by recommending its use to State permitting authorities.

Response to: CTR-035-033

See response to CTR-003-005.

Comment ID: CTR-038-002d
Comment Author: Sonoma County Water Agency
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? Y
CROSS REFERENCES C-22
C-24a
C-01a
G-05
G-09

Comment: 2. The following provisions of the rule are supported (1) adoption of metals criteria as dissolved concentrations; (2) expression of the metals criteria as a function of the water-effect ratio; (3) adoption of the proposed new human health criterion for mercury; and (4) the Preamble discussions regarding metals translators, mixing zones, and interim permit limits.

Response to: CTR-038-002d

See response to CTR-003-005.

Comment ID: CTR-039-008
Comment Author: San Francisco BayKeeper
Document Type: Environmental Group
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? N
CROSS REFERENCES

Comment: VI. EPA'S SUGGESTION THAT "INTERIM PERMIT LIMITS" MAY BE ACCEPTABLE IS WITHOUT AUTHORITY IN THE LAW

EPA refers to a suggestion of the State's Permitting Task Force that performance-based interim permit limits may be appropriate where a TMDL/WLA/LA is underway but not yet completed. 62 Fed. Reg. at 42185. This innovative concept has one fatal flaw --- there is no authority for such limits in the Clean Water Act. Indeed, the notion of an interim limit is inconsistent with other important features of the Act.

First, by definition, an effluent limitation must be designed to meet all applicable water quality standards. Interim limits, by definition, would not be designed to assure compliance with standards. Where a

TMDL is underway and presumably pertinent to a Proposed "interim" limit, the waterbody by definition is not meeting an applicable standard. An interim limit, by definition, is deferring the limit which would be required of the particular discharger to meet that standard.

Second, interim limits are a veiled attempt to sidestep the regulatory restrictions placed on compliance schedules. Where authorized, compliance schedules are limited to 5 years and must include interim steps if they are longer than one year. "Interim" limits is simply a way of creating a compliance schedule without the appropriate label. As a result, the proposal appears to contemplate potentially open-ended schedules with none of the limited safeguards provided by compliance schedules. In other words, an interim limit is nothing but an illegal compliance schedule. When included in conjunction with a compliance schedule, as set forth in another section of the proposed rule, BayKeeper is not concerned with the notion of an interim effluent limit (albeit, as noted above, neither is appropriate for inclusion in this proposed rule). 62 Fed. reg. 42208.

Third, the need for interim limits in order to wait for unfinished TMDLs is an extremely flimsy policy reason for creating a new genre of permit limits. Section 303(d), 33 U.S.C. section 1313(d) has required TMDLS for well over a decade. States, including California, as well as EPA simply have refused to comply with that legal obligation. Simply because the agencies have chosen to ignore Congress' mandate is not a valid reason for EPA or the State of California to undermine other sections of the Act, such as the process for establishing effluent limits and compliance schedules.

The reference to interim limits while waiting for TMDLs included in the preamble should be stricken. Should the State choose to authorize compliance schedules, that should be the only process by which a discharger can defer compliance with a water quality-based effluent limit. There is no reason that a schedule of a couple of years but not greater than 5 years would not be ample time to complete a required TMDL process.

Response to: CTR-039-008

EPA disagrees that there is no authority for interim limits in the Clean Water Act.

See response to CTR-002-010b (Category G-02; Compliance Schedules).

Comment ID: CTR-041-006a
Comment Author: Sacramento Reg Cnty Sanit Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? N
CROSS REFERENCES G-05

Comment: Fifth, the District supports the preamble discussion on both interim permit limits and mixing zones as valid implementation procedures. In addition, however, the District specifically endorses the State's Permitting Task Force recommendations on these two subjects: (1) that interim effluent limits be

calculated based on past performance plus future uncertainty, and (2) that the State Water Resources Control Board (SWRCB) should allow the establishment of both acute and chronic mixing zones.

Response to: CTR-041-006a

See response to CTR-003-005.

Comment ID: CTR-043-002d
Comment Author: City of Vacaville
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? Y
CROSS REFERENCES C-22
C-24a
G-01a
G-05
G-09

Comment: 2. The following provisions of the rule are supported: (1) adoption of metals criteria as dissolved concentrations; (2) expression of the metals criteria as a function of the water-effect ratio; (3) adoption of the proposed new human health criterion for mercury; and (4) the Preamble discussions regarding metals, translators, mixing zones and interim permit limits.

Response to: CTR-043-002d

See response to CTR-003-005.

Comment ID: CTR-044-003f
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? Y
CROSS REFERENCES C-22
C-24a
C-01a
G-09
G-05

Comment: We have reviewed the proposed CTR and offer the following comments:

2. The following provisions of the rule are supported:

- (1) adoption of metals criteria as dissolved concentrations;
- (2) expression of the metals criteria as a function of the water-effect ratio;
- (3) adoption of the proposed new human health criteria for mercury; and
- (4) the Preamble discussions regarding metals translators, mixing zones, and interim permit limits.

Were the old human health criterion for mercury (0.012 ug/ l) to be adopted, the City would have to remove its discharge from Tule Canal and go to land disposal. The capital cost to do this would be \$22.1 million and the total present worth cost would be \$23.1 million (see Exhibit B, Required Capital improvements and Costs for Beryllium and Mercury). This would translate to an annual cost of \$3.1 million per year (at 7% over 10 years) and would require that monthly sewer service charges be increased by more than 100%.

Response to: CTR-044-003f

See response to CTR-003-005.

With respect to the comment about the economic impact of the old criterion for mercury 0.012 ug/l, EPA has not evaluated these costs since the CTR does not promulgate a mercury criteria of 0.012 ug/l.

Comment ID: CTR-045-002
Comment Author: Sausalito-Marin Sanitary Dist.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? Y

CROSS REFERENCES

Comment: The District supports many of the items included in the proposed CTR:

The application of interim limits in NPDES permits while Total Daily Maximum Loads (TMDLS) and other special studies are being performed.

Response to: CTR-045-002

See response to CTR-003-005.

Comment ID: CTR-052-002e

Comment Author: East Bay Dischargers Authority
Document Type: Sewer Authority
State of Origin: SC
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-04 Interim Limits
References: Letter CTR-052 incorporates by reference letters CTR-035 and CTR-054
Attachments? Y
CROSS REFERENCES C-22
C-01a
G-09
G-05

Comment: EPA will recall the State Water Quality Plans Task Forces that included all stakeholders, including EPA. The Authority appreciates the incorporation of many of the consensus recommendations from the Task Forces into the CTR, including:

- * Adoption of the metals criteria as dissolved concentrations and the expression of the criteria as a function of the water-effect ratio
- * Adoption of the proposed new human health criterion for mercury
- * Preamble discussions regarding metals translators, mixing zones, and interim permit limits

Response to: CTR-052-002e

See response to CTR-003-005.

Comment ID: CTR-054-004c
Comment Author: Bay Area Dischargers Assoc.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? Y
CROSS REFERENCES G-09
G-05

Comment: BADA supports the Preamble discussions regarding metals translators, mixing zones, and interim permit limits. Translators and mixing zones will provide a better scientific basis for the application of the criteria and will go a long way toward protecting against the imposition of unnecessary or unreasonable controls. Interim permit limits will allow dischargers faced with potential attainability problems to pursue reasonable actions, such as pollution prevention, treatment plant optimization, pollutant trading, TMDLS, etc. prior to being faced with final effluent limitations. BADA endorses the recommendation of the State Plan Public Task Forces on the issue of interim limits.

Response to: CTR-054-004c

See response to CTR-003-005.

Comment ID: CTR-056-002

Comment Author: East Bay Municipal Util. Dist.

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/22/97

Subject Matter Code: G-04 Interim Limits

References: Letter CTR-056 incorporates by reference letter CTR-054

Attachments? N

CROSS REFERENCES

Comment: Second, EBMUD would like to express to EPA its support for inclusion of:

* The application of interim limits in NPDES permits while establishing TMDLs or conducting other special studies,

Response to: CTR-056-002

See response to CTR-003-005.

Comment ID: CTR-059-012

Comment Author: Los Angeles County Sanit. Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: G-04 Interim Limits

References: Letter CTR-059 incorporates by reference letter CTR-035

Attachments? Y

CROSS REFERENCES

Comment: Interim Permit Limits

The Sanitation Districts applaud EPA on the inclusion of the provision in the Preamble which supports the use of interim limits in NPDES permits while TMDLs and other special studies are being performed. We endorse the recommendation of the SWRCB Permitting and Compliance Issues Task Force that interim effluent limits be calculated based on past performance plus future uncertainty.

Response to: CTR-059-012

See response to CTR-003-005.

Comment ID: CTR-060-001
Comment Author: San Diego Gas and Electric
Document Type: Electric Utility
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? N
CROSS REFERENCES

Comment: PROVISIONS SDG&E SUPPORTS

EPA has included in the proposed CTR provisions which are reasonable and with which SDG&E supports. These include:

Interim limits

The preamble discusses the use of interim numeric limits during the time which TMDL/WLA/LA or other special studies are underway but not completed (see 62 Fed. Reg. at 42185, Col. 2). SDG&E agrees that interim limits are appropriate and supports their use. Also, interim limits should be set such that existing discharges can maintain compliance during the interim period.

Response to: CTR-060-001

See response to CTR-003-005.

Comment ID: CTR-066-002
Comment Author: Delta Diablo Sanitation Dist.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? N
CROSS REFERENCES

Comment: Our preliminary review of the CTR finds several areas that we believe are positive changes and will enhance the rulemaking. The areas that we support as now written are as follows:

* The application of interim limits in NPDES permits while TMDLs and the other special studies that are scientifically supported are being performed.

Response to: CTR-066-002

See response to CTR-003-005.

Comment ID: CTR-081-002a
Comment Author: West County Agency
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? N
CROSS REFERENCES C-24a
G-02
C-22
G-09
C-01a
C-08a
G-05

Comment: * There are many aspects of the CTR that we support. These include: a) Application of interim limits while special studies are performed. b) Approach to water effect ratios for determining site specific criteria. c) Inclusion of provision for compliance schedules. However, this should be modified to allow inclusion of compliance schedules of up to 15 years in permits if deemed appropriate by Regional Boards. d) Metals criteria expressed as dissolved rather than total recoverable concentrations. e) EPA's guidance to Regional Boards regarding use of translators. f) EPA's proposal to create a rebuttal presumption for Water Effects Ratios, g) Revised human health criteria for mercury h) Decision to not promulgate human health criteria at this time in light of issues surrounding health criteria for arsenic. I) EPA's policies regarding application of mixing zones and dilution credits.

Response to: CTR-081-002a

See response to CTR-003-005.

Comment ID: CTR-085-003
Comment Author: Camarillo Sanitary District
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? N
CROSS REFERENCES

Comment: On several aspects of the California Toxics Rule, the District is in agreement with CASA and SCAP comments:

* The application of interim limits in NPDES permits while Total Maximum Daily Loads (TMDL) and other special studies are being performed.

Response to: CTR-085-003

See response to CTR-003-005.

Comment ID: CTR-085-012
Comment Author: Camarillo Sanitary District
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/24/97
Subject Matter Code: G-04 Interim Limits
References:

Attachments? N

CROSS REFERENCES

Comment: On several aspects of the California Toxics Rule, the District is in agreement with CASA and SCAP comments:

* The use of interim permit limits with Total Maximum Daily Loads and other special studies are being performed.

Response to: CTR-085-012

See response to CTR-003-005.

Comment ID: CTR-086-004g
Comment Author: EOA, Inc.
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org: California Dent
Document Date: 09/26/97
Subject Matter Code: G-04 Interim Limits
References: Letter CTR-086 incorporates by reference letter CTR-035
Attachments? N

CROSS REFERENCES G-01

C-22

G-09

C-24a

C-24

K-03

G-05

G-02

Comment: Regulatory Flexibility and Relief

CDA supports language in the CTR Preamble that references and endorses recommendations of the State Task Forces including in part the use of.

* reasonable potential analyses * dissolved metals criteria * translators * water effects ratios * site specific objectives * innovative TMDL processes such as effluent trading * performance based interim limits * chronic and acute mixing zones, and * compliance schedules in NPDES permits.

Response to: CTR-086-004g

See response to CTR-003-005.

Comment ID: CTR-090-002f

Comment Author: C&C of SF, Public Util. Commis.

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: G-04 Interim Limits

References: Letter CTR-090 incorporates by reference letters CTR-035 and CTR-054

Attachments? Y

CROSS REFERENCES C-17a

C-24a

C-22

G-05

G-02

Comment: There are many features of the proposed rule which we strongly endorse, specifically:

* the use of the latest IRIS values for human health criteria, it is essential that the criteria be based on the latest scientific and environmental information;

* recognition that the dissolved fraction of metals, rather than the total recoverable, better reflect the aquatic toxicity of metals;

* recognition that for certain metals (e.g. copper and zinc) ambient water chemistry is critical in determining toxicity thereby endorsing the Water Effects Ratio;

* recognition and strong endorsement of the multi-tiered mixing zones for acute, chronic and human health effects; and

* recognition of interim limits and compliance schedules as appropriate implementation strategies,

Response to: CTR-090-002f

See response to CTR-003-005.

Comment ID: CTR-092-006
Comment Author: City of San Jose, California
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: G-04 Interim Limits
References: Letter CTR-092 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES

Comment: Interim Limits

The City supports the concept of interim numeric permit limits when a TMD or other special investigation is underway but not yet completed. The City supports the discussion of factors applicable to the derivation of interim numeric permit limits, specifically past treatment performances, future uncertainty, receiving water body attainment and water quality. The City further encourages flexibility and innovation as illustrated by the concept of effluent "trigger concentrations".

Response to: CTR-092-006

See response to CTR-003-005.

Comment ID: CTRH-001-039b
Comment Author: Robert Reid
Document Type: Public Hearing
State of Origin: CA
Represented Org: CASA
Document Date: 09/17/97
Subject Matter Code: G-04 Interim Limits
References:
Attachments? N
CROSS REFERENCES C-24a
G-02

Comment: I've been saving the good news for last.

Fourth, and by no means last in priority for CASA, we wish to register our support for several parts of the preamble to the CTR.

We support application of interim limits in NPDES permits while TMDLs and other special studies are being performed.

We also support EPA's approach to water effects ratios for determining site-specific criteria.

We also support the inclusion of a provision allowing the compliance schedules in permits in the rule,

although we recommend that it be modified to allow the regional boards to include compliance schedules of up to 15 years in permits, if they deem it appropriate.

Thank you for the opportunity to present our views. As I said earlier, we will be submitting detailed comments on the proposed rule by the end of the comment period, which hopefully will be extended in response to our and others' requests.

Response to: CTRH-001-039b

See response to CTR-003-005.

Comment ID: CTRH-001-057c

Comment Author: Dave Tucker

Document Type: Public Hearing

State of Origin: CA

Represented Org: San Jose Env. Serv. Dept.

Document Date: 09/17/97

Subject Matter Code: G-04 Interim Limits

References:

Attachments? N

CROSS REFERENCES K-03

C-24a

G-07

G-09

C-22

G-05

Comment: Some of the flexibility that the City highly supports is the water effect ratio investigations to adjust statewide criteria to site-specific conditions; the interim limits concept while special studies are being conducted by the dischargers and other entities; a variance procedure to allow dischargers to achieve progress toward effluent limit attainment without violating applicable water quality standards; dissolved criteria for metals to reflect the toxicological conditions; translators to adjust dissolved criteria to total permit limitations; trading programs to attain and maintain water quality; and a mixing zone that reflects true instream pollutant conditions and that protects beneficial uses.

Response to: CTRH-001-057c

See response to CTR-003-005.

Comment ID: CTRH-002-011b

Comment Author: Lisa Ohlund

Document Type: Public Hearing

State of Origin: CA

Represented Org: Alliance of So. CA POTWs

Document Date: 09/18/97

Subject Matter Code: G-04 Interim Limits

References:

Attachments? N

CROSS REFERENCES G-02

C-22

K-01

Comment: Now, I'd briefly like to touch on several issues of importance to SCAP members. In addition, we will be submitting written comments before the close of the public comment period.

I'd like to begin by mentioning our support for several provisions included in the draft CTR, and those include the provision authorizing the use of compliance schedules -- although we don't necessarily agree with the time period -- the expression of metals criteria as dissolved rather than totally recoverable, and discussion in the preamble supporting the use of interim limits in permits, while the total maximum daily loads and other special studies are being performed.

Response to: CTRH-002-011b

See response to CTR-003-005.
